

*United States Court of Appeals  
for the  
District of Columbia Circuit*



**TRANSCRIPT OF  
RECORD**



JOINT APPENDIX

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UNITED STATES COURT OF APPEALS  
For The District Of Columbia Circuit

473A  
No. 20,141

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WALTER N. TOBRINER,  
JOHN B. DUNCAN,  
FREDERICK J. CLARKE,  
Board of Commissioners, D. C. ,

Appellants,

v.

ADRIAN S. CARROLL,

Appellee.

United States Court of Appeals  
for the District of Columbia Circuit

FILED JUN 6 1966

*Nathan J. Parsons*  
CLERK

Appeal From The United States District Court  
For The District Of Columbia

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

ADRIAN S. CARROLL,

Plaintiff,

v.

Civil Action No. 1038-'64

WALTER N. TOBRINER,  
JOHN B. DUNCAN,  
CHARLES M. DUKE,  
Board of Commissioners of the  
District of Columbia.

Defendants.

CIVIL DOCKET

DATE

PROCEEDINGS

1964

May 1 Complaint, appearance filed  
May 1 Summons copies (3) and copies (3) of Complaint  
issued all ser. 5-4-64  
May 25 Answer of defts to complaint; c/m 5/25/64; appearance  
of Chester H. Gray and Robert R. Redmon. filed

May 25 Calendared (AC/N) (N)

Oct. 8 Called Assistant Pretrial Examiner

1965

Mar. 18 Motion of plaintiff to stay Rule 13; c/m 3-15. filed

Mar. 29 Order staying Rule 13 to & including October 1, 1965.  
(N) Matthews, J.

Apr. 14 Certificate of readiness by defendants; c/m 4/13/65.  
filed

Apr. 19 Objection of plaintiff to ready certificate; c/m 4/16/65;  
M. C. 4/19/65. filed

Apr. 19 Motion of plaintiff for production; points and  
authorities; c/m 4/16/65; M. C. 4/19/65. filed

Apr. 29 Opposition of deft. to motion for production;  
c/m 4-29. filed

May 7 Recommendation overruling plaintiff's objections to  
Certificate of Readiness. (AC/N) Pretrial  
Examiner

May 10 Order granting plaintiff's motion for production of  
documents for inspection, copying or photographing.  
(N) Youngdahl, J.

Sept. 14 Motion of plaintiff for summary judgment; c/m 9/14/65;  
M. C. 9/14/65. filed

Sept. 15 Statement of material facts by plaintiff; c/m 9/15/65.  
filed

Sept. 15 Stipulation extending time for defendants to answer  
motion for summary judgment to and including  
10/15/65. filed

Oct. 14 Stipulation extending to and including 11/15/65 time  
for defendants to respond to motion for summary  
judgment. filed

Nov. 15 Stipulation of counsel extending time for defendant to  
oppose motion for summary judgment to and  
including 12/6/65. (M/N) filed

Nov. 23 Points and authorities of plaintiff in support of motion for summary judgment; supplemental points and authorities; affidavit; exhibits 1 thru 13; c/m 11/22/65. filed

Dec. 6 Stipulation extending time for defendants to respond to motion for summary judgment to and including 12-14-65, M/N filed

Dec. 14 Motion of defendants for summary judgment; Exhibits 1-30; points and authorities; statement. filed

1966

Jan. 27 Supplemental P & A in support of motion of defts for S. J. & in opposition to pltfs motion for summary judgment; c/m 1/27. filed

Feb. 8 Memorandum Opinion granting plaintiff's motion for summary judgment and denying defendants' motion for summary judgment. (N) Gasch, J.

Feb. 24 Order denying defts' motion for summary judgment and granting pltff's motion for summary judgment; directing defts. to amend their finding and Order of February 12, 1964 to reflect that pltff's retirement be for disability aggravated by performance of duty, effective from and after November 30, 1962, and to pay pltff. in a lump sum the difference between what he has been paid since November 30, 1962 and what he would have been paid had his retirement been for disability incurred in line of duty as of November 30, 1962. (N) (signed February 23, 1966) Gasch, J.

\* \* \* \* \*

[ Filed May 1, 1964]

COMPLAINT FOR MANDATORY INJUNCTION  
DIRECTING RETIREMENT OF POLICE OFFICER  
FOR DISABILITY INCURRED WHILE PERFORMING  
DUTY AND DIRECTING REVERSAL OF THE ORDER  
RETIRING POLICE OFFICER FOR DISABILITY NOT  
INCURRED IN PERFORMANCE OF DUTY

1. Jurisdiction. The jurisdiction of the Court is based upon and invoked under Title 11, Section 306 of the D. C. Code (1961 Ed.) and under its general power and equitable jurisdiction in that this suit involves action on the part of the defendants in violation of the rights of the plaintiff which has, and, if not enjoined, will continue to cause him irreparable and incalculable damage.

2. Plaintiff. Plaintiff is a citizen of the United States, a resident of the State of Maryland, and was a member of the Metropolitan Police Department of the District of Columbia for approximately sixteen and three-quarters years prior to his retirement for disability from and after November 30, 1962.

3. Defendants. The defendants, Walter N. Tobriner, John B. Duncan and Charles M. Duke, are all members of the Board of Commissioners of the District of Columbia and as such, among other things, supervise and control the aforementioned

Metropolitan Police Department of the District of Columbia.

4. Plaintiff Incurred Disability in the Line of Duty.

Plaintiff, Adrian S. Carroll, born March 30, 1919, was appointed a member of the Metropolitan Police Department of the District of Columbia on January 16, 1946 at which time he was found to be fully qualified, both physically and otherwise, for said appointment.

Plaintiff, as a result of performing his duties as a member of the Metropolitan Police Department or as the result of aggravation of said duties, became afflicted with a phychoneurotic depressive reaction, chronic with some paranoid trends which alternately made him unfit or unable to perform his duties as a Metropolitan police officer as the result of which he was recommended for disability retirement by the Board of Police and Fire Surgeons, a group of physicians and surgeons under the supervision and control of the Board of Commissioners of the District of Columbia, a member of which Board in substance confirmed and gave the opinion that the said condition was attributable to the performance of duty.

5. Action of the Retirement and Relief Board. As a result of the plaintiff's aforementioned disability incurred in the line of duty and the recommendation of Board of Police and Fire Surgeons, plaintiff appeared before the Police & Firements [ sic] Retirement

and Relief Board for retirement, which if granted on the basis of disability incurred in line of duty would have resulted in plaintiff having been retired on the basis of 66 2/3% of his base pay at the time of retirement, the proceeds of which would not be subject to Federal or State income tax. On November 30, 1962, the said Board rendered a decision retiring plaintiff for disability not incurred in line of duty to take effect from and after November 30, 1962 said decision being rendered by a split decision in which three members were in favor of retiring plaintiff for disability not incurred in line of duty and two members including the psychiatrist of the Bureau of Mental Health of District of Columbia and the Deputy Chief of Police, Metropolitan Police Department dissented indicating their belief that plaintiff should be retired on disability incurred in line of duty.

6. Plaintiff's Appeal Rejected by Commissioners. Thereafter, the plaintiff appealed the aforementioned order of the Retirement Board to defendants which appeal was rejected by said defendants and the said order of the Retirement Board affirmed.

7. Plaintiff's Irreparable Injury. As a result of the defendants' action as aforesaid, the plaintiff has been retired for disability not incurred in the line of duty and has been irreparably injured thereby. Plaintiff has done all that is required by law in

order to receive the retirement annuity allocated to Metropolitan policemen who are retired for disability incurred or aggravated in the performance of duty, but nevertheless, the said annuity to which he is entitled has been denied him and he will continue to suffer this loss throughout the remaining years of his life and plaintiff has no other source of relief from defendants' action except by way of appeal to a Court of equity.

8. Defendants Action Arbitrary. The defendants' action in sustaining the split three to two decision of the Retirement Board is arbitrary and unsupported by the evidence before the Board and before the defendants.

WHEREFORE, plaintiff prays:

1. That the Court issue a Mandatory Injunction directing the defendants to reverse their aforementioned order sustaining the action of the Police and Firemen's Retirement and Relief Board and directing the defendants to reverse the order of the said Retirement Board and directing the defendants to order plaintiff retired for disability incurred in performance of duty effective from and after November 30, 1962 and, further directing the defendants to pay the plaintiff the difference between what he has been paid since November 30, 1962 and what he should have been paid had his retirement been correctly

designated under Title 4 Section 527 of the District of Columbia Code, at the rate of 66 2/3% of his base pay, said money to be paid plaintiff in a lump sum.

2. That the Court grant plaintiff such other and further relief as the nature of the case may require.

\* \* \* \*

[ Filed May 25, 1964]

ANSWER OF THE DEFENDANTS WALTER N. TOBRINER,  
JOHN B. DUNCAN AND CHARLES M. DUKE

First Defense

The complaint fails to state a claim against the defendants upon which relief can be granted.

Second Defense

1. The defendants admit the existence of Title 11, Section 306 of the D. C. Code, 1961 ed., as alleged in paragraph numbered 1 of the complaint, but deny that this Court has jurisdiction solely by reason thereof. They deny that any action taken by them is violative of any rights of the plaintiff.

2 and 3. The defendants admit the allegations contained in paragraphs numbered 2 and 3 of the complaint.

4. The defendants admit the allegations contained in the first sentence of paragraph numbered 4 of the complaint and deny the remaining allegations contained therein.

5. Defendants deny that plaintiff's disability was incurred in the line of duty, as alleged in paragraph numbered 5 of the complaint, and admit the remaining allegations contained in said paragraph.

6. Defendants admit the allegations contained in paragraph numbered 6 of the complaint.

7. Defendants admit that plaintiff has been retired for disability not incurred in the line of duty and deny the remaining allegations contained in paragraph numbered 7 of the complaint.

Further answering said paragraph, the defendants admit that plaintiff has exhausted his administrative remedy concerning the action of defendants and the Police and Firemen's Retirement and Relief Board.

8. Defendants deny the allegations contained in paragraph numbered 8 of the complaint.

Further answering the complaint, the defendants deny all allegations not specifically admitted or otherwise answered.

\* \* \* \*

[ Filed September 14, 1965]

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

The Plaintiff moves the Court to enter Summary Judgment in his favor on the ground that consideration of the pleadings, including the verified complaint and other documents on file in this case, demonstrate that there is no genuine issue as to any material fact and that Plaintiff is entitled to judgment as a matter of law.

\* \* \* \* \*

[ Filed November 23, 1965]

AFFIDAVIT OF CARLETON U. EDWARDS II

DISTRICT OF COLUMBIA ) ss.

Carleton U. Edwards, II, being first duly sworn, deposes and says as follows:

1. I am one of the attorneys for the above-named plaintiff Adrian Carroll and have personal knowledge of the matters herein-after referred to and make this Affidavit in support of Plaintiff's Motion for Summary Judgment.

2. Certain documents are attached hereto as exhibits,<sup>1</sup>

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<sup>1</sup> By leave of Court, three copies of the exhibits designated by both sides for inclusion in the joint appendix (other than the transcript of proceedings) are contained in folders filed with the Court in lieu of printing in the joint appendix.

and all of them were either received from the District of Columbia Government or their representatives by plaintiff's counsel, or appear as part of said plaintiff's official personal file maintained by the District of Columbia. These exhibits which are deemed pertinent to the said Motion for Summary Judgment are as follows:

EX (1) A Board of Police and Fire Surgeons medical survey report on plaintiff dated September 25, 1945 showing that he was physically qualified for appointment to the Metropolitan Police Department.

EX (2) Plaintiff's "sick leave card" running from March 22, 1948 through June 29, 1962, showing, among other things, 22 days sick leave ending September 23, 1961 for "depressive reaction", the attending physician being Dr. Shapiro.

EX (3) A Metropolitan Police Department form dated July 1, 1965 showing plaintiff's satisfactory service from 1955 through January 16, 1961 with the exception of one 6-month period.

EX (4) A Metropolitan Police Department form entitled "Report on Excess Sick Leave" dated September 25, 1961, showing approval on behalf of the defendant Commissioners of 22 days sick leave commencing August 24, 1961 for Depression Reaction, 14 of which days were in excess of that permissible unless connected with duty.

EX (5) A copy of a report dated October 25, 1962 from Dr. H. D. Shapiro, a member of the Board of Police and Fire Surgeons to the Board of Police and Fire Surgeons indicating diagnosis of plaintiff's condition as "psycho neurotic depressive reaction, chronic, with some paranoid trends", and indicating that plaintiff was no longer able to perform his duties as a police officer and recommending his appearance before the Retirement Board.

EX (6) A copy of the letter dated September 27, 1962 from the Chairman of the Board of Police and Fire Surgeons to the Chief of Police advising that plaintiff had surrendered his service revolver on advice of Dr. Shapiro for psychiatric reasons.

EX (7) A Board of Police and Fire Surgeons medical survey report dated October 30, 1962 recommending plaintiff's disability retirement stating in part:

"Mentality - Psycho Neurotic Depressive Reaction".

EX (8) A copy of a letter from the Retirement and Relief Board dated November 7, 1962 to the Chief of Police regarding plaintiff's recommended retirement, which stated in part:

"You are requested to direct Private Carroll to appear before the Police and Firemen's Retirement and Relief Board at 1:30 p.m., Thursday, November 29, 1962 . . . Private Carroll may be expected to demonstrate a connection between his official police duties and the disability which incapacitates him for further duty . . ."

**EX (9)** A transcript of the Hearing on November 29, 1962 before the Police and Firemen's Retirement and Relief Board regarding the disability retirement of the plaintiff.

**EX (10)** A copy of a Police and Firemen's Retirement and Relief Board decision dated November 29, 1962 showing that three members recommended retirement for disability not incurred in the performance of duty and that the psychiatrist member of the Board and Deputy Chief of Police member of the Board dissented on the ground that they felt that retirement should be for disability incurred in the line of duty.

**EX (11)** An Order of the Police and Firemen's Retirement and Relief Board dated November 30, 1962 directing plaintiff's retirement for disability not incurred in the line of duty.

EX (13) A memorandum from Henry Hubbard, Personnel Officer, D. C., dated August 12, 1963 to Commissioners, D. C. opposing plaintiff's appeal to the Commissioners.

/s/ Carleton U. Edwards II  
CARLETON U. EDWARDS, II  
Attorney for Plaintiff

Subscribed and sworn to before me a Notary Public this  
22 day of November, 1965.

/s/ Anna Belle Alderman  
NOTARY PUBLIC

\* \* \* \* \*

BEFORE THE POLICE AND FIREMEN'S  
RETIREMENT AND RELIEF BOARD

November 29, 1962

IN RE: Disability retirement of Private Adrian S. Carroll,  
Fourteenth Precinct, Metropolitan Police Department.

THE BOARD:

Victor A. Howard, Chief, Administration & Safety Division,  
Acting Chairman.

Lyman J. Umstead, Assistant Corporation Counsel, D. C.  
Thomas A. Mathews, M. D. Psychiatrist, Bureau of  
Mental Health, D. C.

Lorraine T. Johnson, Deputy Chief of Police, Metropolitan  
Police Department.

John R. Barry, Chief Instructor, D. C. Fire Department.

**PRESENT:**

Hyman D. Shapiro, M. D., Member, Board of Police and Fire Surgeons.

Bernard Margolius, Attorney At Law, representing Private Carroll, 1000 Vermont Avenue, N.W., Washington, D. C.

\* \* \* \* \*

Mr. Howard: Officer, what is your full name and address?

**PRIVATE ADRIAN S. CARROLL**

Testified under oath as follows:

Pvt. Carroll: Adrian S. Carroll, 4405 54th Place.,

Bladensburg, Maryland.

Mr. Howard: Mr. Margolius, we would like your full name and address and capacity before this Board.

Mr. Margolius: Bernard Margolius, 1000 Vermont Avenue, N. W., attorney for Mr. Carroll.

Mr. Howard: Dr. Shapiro, will you give us the report of the Board of Police and Fire Surgeons relative to Private Carroll?

**DR. HYMAN D. SHAPIRO**

Testified under oath as follows:

Dr. Shapiro: The Board of Police and Fire Surgeons considered the case of Private Carroll on October 30, 1962 and recommended a disability retirement because of psychoneurotic

depressive reaction. The only other abnormality was blood pressure of 150/100 which, with no corroborative evidence of cardiovascular disease, could probably be symptomatic of the psychoneurotic state. Attached thereto is a report of mine to the Board of Police and Fire Surgeons on October 25, 1962, stating that;

"Private Adrian S. Carroll has been under my care and observation since August 31, 1961.

Details of his past history and present illness, reference should be made to the exhibits attached. My diagnosis is that of a psychoneurotic depressive reaction, chronic, with some paranoid trends.

It is my opinion that because of this condition, Private Carroll is no longer able to perform the duties of a Police Officer. I therefore recommend that Private Carroll appear before the Retirement and Relief Board for consideration of his retirement."

The exhibits attached first of all were my original consultation of August 31, 1961, more than a year ago when he was referred to me by Dr. O'Keeffe because of a history of nervousness and the fact that he could find no physical basis for the complaints.

When I saw him, he was 42 years old. He had over 15 years of service. He told me his chief complaint was being nervous and uncomfortable around people.

"Family history: Negative, except that one brother age 44 had a mental breakdown and has been at the Vetrans [ sic] Hospital at Perry Point for twelve years. A second brother age 40 has bad nerves. He is married, has two children and the marital situation is excellent he claims.

Social History: He was born on 3-30-19, in Alexandria, Va., and has lived in the D. C. area all his life. He claims he completed 11 1/2 years of schooling at the age of 13 (when I questioned him about this he was not quite sure. He claims he quit high school after 1 1/2 years at the age of 13.) He had to quit when his father died and go to work. He worked as a messenger for the Western Union Postal Telegraph and then in the dark room at Harris and Ewing for 1 1/2 years and then for the Briggs Meat Plant doing casing work for 7 years until he was inducted in the Army in the spring of 1944. He was in the Infantry and overseas and in considerable combat. He had a schrapnel wound of his shoulder while in combat and received the Purple Heart decoration. He made a full recovery from this and has filed no claim with the VA. He was honorably discharged about 8/1945 and then entered the Police Department on 1-16-46. He states that he has done well since then, 'I guess.' When I questioned him further he advised me that he was at No. 12 Precinct

for 15 years as a footman and during an inauguration year, in this past year he hadn't slept for three days and nights and had a little too much to drink after that and got a reprimand. He was just transferred. He is very vague about this and he is quite vague and evasive when I asked him about any Trial Boards. He finally stated that after he had been at No. 12 for about 10 years he had a few beers and had an argument with his brother-in-law who later called in the Maryland Police and he blames it on his brother-in-law having a grudge and being jealous of him. He was held in the Police Station at Hyattsville for a short time and released without any charge, but the D. C. Police were called. He went before the Trial Board and was fined \$50.00 and given a ten day suspension for being under the influence of alcohol while off duty. Three years later while still at No. 12 states he was tried by his Captain for not being punctual at roll call and this again happened another time and then in April 1961 he was charged with failing to notify the Station that he was on sick call at the time of roll call. He had a Trial Board. He is not sure of the charges, but thinks one was being late and second for failing to notify the Station when he was on sick call. He was fined \$50. He tells me that actually he had taken a couple of sleeping capsules that Dr. Esch, he thinks, had given him and he overslept. He had

taken these for a violent headache.

Previous Illnesses: He denies any serious illnesses prior to coming into the Department. According to his master sick card he lost six days in 1948 for abrasions to his forehead and nose. He does not know what for. In 1948 he was treated for lumbo-sacral strain for eight days. He states that this happened when he unhocked the bumpers of cars and had lifted a trunk at home. He is not quite certain. In 1957 he lost three days for a bruised leg. He states he could not bend or straighten up for a number of days. In February of 1958 he was treated for four days for arthritis in his right arm and in May of 1958 he lost four days for diagnostic studies. He does not know what this was for. Dr. O'Keeffe's files show that he lost five days for a similar condition in January 1959 and November 1959. In June 1960 he lost four days this time for a painful left knee. In April of 1961 he was off approximately five days for cephalgia. This by Dr. Bailey. In June 1961 he lost two days for sinusitis. On February 26, 1960 he was placed under anesthesia at the Washington Hospital Center and his anal canal dilated and a large fecal impaction broken up. Reference should be made to his x-rays in the medical and surgical file. On May 15, 1958, the x-ray of the right knee was normal. On June 19, 1961 his cervical spine was x-rayed and he showed a mild

degree of hypertrophic lipping. On June 6, 1961 both knees were x-rayed and were normal except that on the left there was some slight spurring. Dr. Harrell reports a dislocation of his left knee of 6-6-60, again on June 8th he reported his knees better, but facial expression suggests a mild early parkinsonism. The man states his neck had been stiff for two or three months.

Developmental History: Neuropathic traits denied. He denied that he was nervous. Habits: Twenty to thirty cigarettes. As regards to alcohol he was quite vague. At first he stated he drank a few beers and then tried to change the subject and I never could get from him an adequate history as to his drinking habits.

Present Illness: For the last five months since being at No. 14 and being before the Trial Board twice he had a feeling that the officials there were checking on him and following him around. As a result he hates to come to work and this had made him so nervous he can't think straight. He states his Captain wanted him to see a psychiatrist about two months ago. He did not think it was necessary so he didn't. At the present time he comes in because he feels shook up at coming to work and he can't get around people and gets sort of confused. He does not patrol the beat the way he used to. He fears something will happen at one end of the beat when he is on the other. He states they

are all colored on his beat and he doesn't like to be around them. He keeps repeating when he is ready to go to work he feels he can't and he cannot take any interest in his work. He has not been sleeping good for over a month and he is taking tablets, one or two a night prescribed by Dr. O'Keeffe. He takes a few beers at times to quiet his nerves. He states his spirits are very bad. However, he claims he has had no crying spells. He has been down in the dumps about three months. He can't get going at his work.

Examination: The man had a blank mask like expression. His voice was low and he spoke in a monotone. Many of his answers were one word or were in monosyllables. [ sic] He seemed to be very depressed and slow and sluggish. He looked straight ahead and he was quite vague in many of his replies. His pupils were very small but reacted to light. He had been taking some sleeping capsules and also some medication prescribed by Dr. O'Keeffe for diarrhea. This may account for it. His gait was normal. There was less associated swing in his left upper extremity, but no cog-wheeling. He states he has been off duty for a week.

Diagnostic Impression: It was difficult to make a diagnosis other than this man did have a psychoneurotic depressive reaction. Whether this was due to the injudicious use of alcohol or barbituates

I could not tell. I asked him to discontinue all his sleeping medication. I placed him on Deprol, 4 tablets a day. If he continued to act the way he did I was going to have him come in for a blood alcohol and barbituate test."

I followed this man along and got a satisfactory response and got him back to duty and I will read my notes. The man came in, in September 1961.

"The man comes in stating that the Deprol has been helping him some. He is still slow and has a mask like expression. He does not present any typical Parkinson's appearance. He is no longer as drowsy as he was before. He was continued on sick leave and told to continue his Deprol and to see me in a week."

He returned to see me on September 14, 1961. He stated, I will read from my report.

"He states he is no better. He is still vague and slow. He felt the Deprol was not helping him. He is sure he could not do duty and told me the best thing he could do was to retire for disability. I told him I wanted to continue him on treatment for a while."

He returned a week later. "He seems somewhat improved and more alert. He is now ambivalent regarding retirement. He agrees with me that he should try to work. He was put on the beat

and was to see me within the week. He was to continue on Deprol."

He returned five days later, on September 26, 1961, he stated he was, "doing pretty good on the beat. He is continuing to take his four Deprol a day. He is to be seen the following week."

He came back to see me on October 6, 1961, and he was a changed man. As I recorded, he was "doing well and he is doing full duty. He has no complaints. He is alert and smiling. He is taking four Deprol a day and occasionally gets drowsy. He was told to cut down on these. He was discharged from the Clinic on a standby basis and told to consult me when necessary."

He was very well motivated for duty then and anxious to return although previously when very depressed he felt he could not do duty. Now, I saw him again on September 12, 1962, this is about 11 months later. He came to see me again.

"He reports to me, he states, at the request of his Acting Captain Jenkins, who states he should see a psychiatrist. I note that in my previous report of August 31, 1961, that his previous Captain Causey had asked him to come in to see me and he had postponed doing that until he saw me in August of 1961. Here is his story as to why he is coming in to see me:

About three weeks ago, after coming off from his Midnight duty, he left his station at 12:20 A. M. He was due back on duty at 7:30 A. M. He was on a short change and then went to sleep. He remembers seeing the clock show 2:00 A. M. and then the next thing he remembers was a call from his precinct at 7:40 A. M. asking him why he had not appeared at roll call at 7:30. He told me that he had set three alarm clocks, two American and one German make, to awaken him in time to get to the precinct at 7:30 A. M. For some reason he did not hear any of these clocks. He told the precinct he had over slept. He claims he reported to the precinct at 8:03 A. M. Was asked to make a statement, re: his not reporting on time.

About ten days later while working a Midnight shift, he was due to report at 11:30 PM. He states he got to the precinct at about 10:45 P. M. and as he had time before reporting in he parked his car in back of the station and while sitting in his car with his radio on, he dozed off, and the next he knew it was 11:31 P. M. He rushed in and got into uniform and reported for his duty at 11:38 P. M., eight minutes late. He states that Captain Jenkins called him in relative to a possible reprimand. The Officer felt that this was in relative to a possible reprimand. He felt that this was not justified as he had

just come off a short change. (At this point he goes into a fit of weeping and he was unable to continue with his history for a short period of time. Then he continued in a broken voice as follows:)

"I was told he would have to give me a reprimand as this was a repetition of my behavior. I told Lt. Jenkins that some allowance should be made as the first episode was after a short change and the second I had reported in time but dozed off. I explained that I had been previously reprimanded in the past year, but at the time I was taking sleeping capsules. Lt. Jenkins told me that I had the wrong attitude about the Department." He then goes into a story about another Lieutenant, a Lt. Sullivan, "watching me like a hawk. At the first opportunity, he is out to get my job. If I was to have a Trial Board for the third time in a year it would be an automatic dismissal." He again goes into his previous Trial Board actions and was told that as a result of his two previous Trial Boards, a little over a year ago, that he was being held up for a raise which was due on his sixteenth year of service. He states that this is going to cost him \$300. a year for the next four years. He then states, "I feel that it is not right. Once before as a result of the Trial Board action, I will not get a raise for four years. I don't think it is right as long as I paid my fines. Now I am worried that there may be a

third reprimand in the offing. This will be the first time this year. I feel that it is only a question of time before either of the two Lieutenants who are on me will make it so miserable for me that I will be fired." He told me he is so upset and so depressed that he is in no frame of mind to go back to duty.

At this time he told me that he did not truly tell me how badly he felt when he saw me last on October 6, 1961. While at that time he put on a good front and told me he was doing well and was doing full duty, that actually even at that time, "I still hated to go back. I have hated to go back to duty ever since. All of these niggers have you and the Police won't back you up." I asked him what he meant by that. He apparently changed the subject and he stated, "If I am late I believe my officers should give me a warning. They should try to keep you out of trouble instead they write you up or make you write reasons." I then asked him what he meant by "the niggers." He again evaded the question and states, "It is my outlook. Why should Police Officials hate you." I told him he was being evasive in answering me and he answered me, "It is hard to put into words." He then stated, "Well, here it is. If someone wants to get my job, I feel I may kill him. I probably would not. I have better sense. I go to church regularly. I told a sergeant, a friend of mine, that I may do it." He states he is somewhat worried about this.

Incidentally I may interrupt and indicate that when a person is in a psychoneurotic state, these states are likely to be exaggerated, but it's a part of the psychiatric pathology.

"I then questioned him about his drinking and he stated that he did not drink on duty but does drink beer when he is off duty. When I asked him to give me the amount he was again as evasive as he had been when I had seen him the previous year. He answered, "Enough to feel good and forget my trouble. Just enough to feel good." When I insisted that he be a little bit more specific, he stated, "Not enough to get drunk. I drink slowly. I drink eight to ten bottles of beer when I am off duty often. I average four to ten bottles of beer." I then questioned him about whether he had been taking any more drugs or sleeping tablets or capsules and he answered that he had not taken any lately and in fact none since his last visit to me. He told me that Dr. Montgomery had placed him on sick report on September 19th. I checked this with Dr. Montgomery and this was so. He told me that he could not go back to duty, in fact he feels like he could never go back to duty. I then asked him would he undertake to take the Depral again. He admitted he had not taken it regularly before. I told him that if he took this medication and continued to drink it may affect his liver. He told me

he did not feel like he wanted to take any medication that he apparently was not motivated for treatment and there was nothing that I could do. He was to think over whether he would stop his drinking and take the medication that I had prescribed.

He returned to see me on September 25, 1962. "He still feels he cannot do duty. He is willing to take his medication. His chief complaints today is his insomnia. He rarely sleeps longer than from 10:30 P. M. to 3:00 A. M. He is smoking a little. He is impatient. He is depressed. He tells me he lives in Bladensburg and hates to come into Washington. He is on medication now. He admitted now that he had not taken the Deprol with any regularity when I prescribed it for him last year. He was given a prescription for Deprol, one tablet three times a day and two at bedtime.

He returned to see me on October 6, 1962. "He had decided to take the Deprol which I had prescribed, one three times a day and two at night. He had stopped his drinking. He told me he has not seen much change in his condition, except that he is sleeping better. He is still depressed. He still felt he could not return to duty. He had enough medication left for one week. He was told he was to return then for me to see how he felt at that time."

He came back on October 12, 1962, stating he is sleeping a little better. However, he is usually up after four hours of sleep and then he is up from an hour to an hour and a half and may be up for that period of time or less and then attempts to get some sleep. Otherwise, his condition is unchanged. His medication was gone and I renewed his prescription. At this time he brought in with him considerable correspondence for me to see regarding the difficulties he had with respondence [ sic] for me to see regarding his Superiors and before the Trial Boards. These concern his conduct while detailed to the Armory on the morning of January 21, 1961 and from then on. Copies of this correspondence is attached hereto. He states he wants me to go over this correspondence, especially since he had been ordered to the Trial Board on two previous occasions, as he felt that, "I think that this will show you that the officials are out to get me." As I go over this correspondence, I cannot come to such a conclusion. It appears to me that this man is exhibiting some paranoid ideation in the conclusions he has reached regarding the actions taken in his case following admitted infractions. He added also that a Lieutenant who came into the Department with him, tried to get him a third time in a year for leaving his residence while on sick leave. He claims he did not and that he was asleep with sleeping

capsules that Dr. Esch had given him. This is recounted in one of the statements that he has left with me. He states that he was asleep and just did not hear the call when he was checked on. He states he has sweated it out for eight months with Officers constantly watching him. Also that they have given him an all midnight detail in the biggest beat there is as a reprimand.

I then saw him on October 23, 1962. "There is no change in his condition other than that the Deprol helps him to sleep better. He comes in for a renewal of his prescription. He still feels he cannot do duty. He is being written up for retirement."

Mr. Umstead: At this point, Mr. Margolius, you are aware that this man's entire medical and personnel files are before this Board for consideration?

Mr. Margolius: Yes.

Mr. Howard: Any questions by members of the Board relative to this report? Mr. Margolius, are there any questions you would like to direct to Dr. Shapiro relative to his report?

By Mr. Margolius:

Q. Doctor, you examined his files apparently, did you not, concerning his past service in the Department?

A. Which file, personnel file?

Q. Yes.

A. No, I don't believe I did. He had the pertinent materials that he gave me and I did go into his clinic files and into his entire medical history.

Q. Well, his actual trouble, I gather from what you have written here starts some where around two years ago. is that right?

A. Yes. As I indicated, there is an excellent history in the past all the way for many years in the Department. And following what he thought was an unjust reprimand and what happened. he became very depressed.

Q. Doctor, the condition from which he is suffering. is that a well recognized psychiatric condition?

A. Very definetly. [ sic]

Q. And could you give us any comment as to what police work has to do with that condition if anything?

A. Well, if you ask me what police work has to do. I imagine that if similar things happened. that if a man was a little late reporting to work in private industry, the same sort of action and reprimands perhaps would not be taken as were taken in this case. Although this man started to brood after that was repeated about the possibility of this effecting his future and effecting his pay. And that was a fact.

it does effect it. This was a factor in his depression. In other words, this depression of his, this psychoneurotic depressive reaction, is a reactive depression. It follows any of a number of real situations and the man reacts to it in that way.

I think because of this, he had ingrafted on it also what I considered to be some paranoid elements. He brooded over what he thought was the unjustness of things and went out of reasonable bounds. There were infractions, but the man thought they were too harsh.

Q. In your reports in several places -- leaving that just for the moment -- there is some indications that he had imbibed beer to an extent which may not be unusual to some people and perhaps unusual for others. He said that when he drinks, it makes him feel better. Is that a natural, plausible reaction?

A. Yes. I did not make a diagnosis of alcoholism. I think, if you read the report, you will find that I felt his drinking was symptomatic of his underlying nervous condition.

Q. Dr. Shapiro, apart from what may have been the cause of his trouble, do you have an opinion as to whether or not police duty aggravates this condition? First, let me ask you, is police duty the cause of his condition?

A. Well, I will say the actual duty was not, but the fact that he had over slept on one occasion and was late on another occasion, I don't know whether you can call that police duty, but the action that followed this did have an effect on this man. So indirectly [ sic] I would state that police duty did cause this.

Q. Performance of duty, not duty. It was in the line of duty, that is the problem?

A. Well, as this man told me these episodes that happened following the short change, and I can see how a man can be sleepy following the short change. The second episode he does report he had plenty of time, had the radio on and over slept. Many of us oversleep. A Policeman of course should make himself available when he is to be there on time. I do not think this man consciously tried to evade duties. He had a good report before he went into the Military and for many years as a Police Officer. I think that is the important thing.

Q. In his statement to you, I skipped it over, didn't study it, but followed you, read yours. Apparently, is it not true, he himself starts a great deal of trouble from this Armory trouble where he had been working for three days straight?

A. That is right.

Q. And from that time on he sort of was on the down slide, is that right?

A. That's right.

Q. Doctor, in a man of this type, after having studied this man and having seen him over a period of time, would constant work for a period of three days and then a reprimand bring out this type of thing in him?

A. Well, it would bring out resentment in some individuals in being upset and depressed, but in the average man not to the degree we have here, but of course we have to take individuals as they come.

Q. I am talking about him.

A. In his case it did, yes.

Q. Is there anything unusual, doctor, in the fact that for a period of twelve, thirteen years, he worked with a minor infraction here and there and did his job well and all of a sudden sees himself in this position, is that unusual?

A. Well, I would state that it's not usual. I think it happens frequently enough, but in this case I would say the extent to which he reacted would be unusual.

Q. Doctor, I don't like to get into racial question, but what significance do you put into this feeling that he had about another race?

A. I merely reported what he told me.

Q. But what significance does that have to you?

A. Well, it was another added factor in doing this type of duty that affected this man. I have quite a number of Officers who have complained of attitudes in changing neighborhoods and the effect it had on their duty.

There was a man just recently after 24 years who was depressed over such a circumstance and I was able to treat him. A certain number of people do react unfavorably to changed neighborhoods and changed types of positions.

Q. Did he indicate to you, doctor, that this attitude developed after he was switched from #12 to #14?

A. Yes. He stated that after the reprimand he was given a change in precincts which upset him too. I did testify to that.

Mr. Margolius: I will wait, Mr. Chairman, until he gives his statement.

Mr. Howard: In other words, you wish to interrogate Dr. Shapiro further after Mr. Carroll has testified?

Mr. Margolius: Yes.

By Mr. Howard:

Q. Mr. Carroll, are you married?

A. Yes, sir.

Q. What is your wife's name?

A. Charlotte.

Q. Is this the first and only marriage for both you and Mrs. Carroll?

A. Yes, sir.

Q. Neither was ever previously married?

A. No.

Q. Are there any children of this marriage?

A. Two daughters.

Q. Will you give us the names and dates of birth?

(At this point Pvt. Carroll becomes somewhat upset.

He takes a moment to compose himself.)

A. Daughters are Sally and you want the age?

Q. Date of birth.

A. All right. June 28, 1941.

Q. Is she married?

A. Yes, sir. She just married a year and a half ago.

Q. And what is the name and date of birth of the other one?

A. She is Rosemary and June 28, 1946.

Q. She would be just about sixteen?

A. Yes, sir.

Q. That constitutes your family?

A. Yes, sir.

Q. According to the record, you were born March 30, 1919, and appointed to the Police Department January 16, 1946. It also shows that you had previous service in the United States Army from March 29, 1944 to August 19, 1945, is that correct?

A. Yes, sir.

Q. Did you have any Federal or District Government Service before coming with the Police Department?

A. No, sir.

Q. Are you familiar with the provisions of the retirement law that permits you to accept a reduced pension, the difference of which would be added to the pension your wife would receive, or a designated minor child, if they survived you?

A. Yes, sir.

Q. What is your wish?

Mr. Margolius: Let me advise him to take the whole pension.

By Mr. Howard:

Q. You wish to take the full pension?

A. Yes, sir.

Q. During your service as a Police Officer were you ever employed for hire in any capacity on your off duty time?

A. No, sir.

Q. Again, on your off duty time, did you ever sustain any injury or contract any disease that required medical attention or hospitalization?

A. No.

Q. Never in any automobile accident or in any difficulty around the house?

A. Well, one time I was called --

Q. Was this off duty?

A. No, sir.

Q. Wait until we get to that. I mean off duty.

A. Well, I did move this truck and when I picked the bumpers up, I couldn't straighten up.

Q. Let's not worry about on duty.

A. Well, I moved the truck. It was kind of heavy and I shouldn't have lifted it and I sprained my back a little bit. One time I did excavate a street and I slipped on the street and on a dark street and I stepped in a hole and couldn't see and that is how I got the cut on my forehead here.

Q. Anything lasting that has stayed with you?

A. No, sir.

Q. Now, with respect to on duty situations were you ever injured or did you contract any disease that required medical attention or hospitalization as a result of your police duties?

A. Yes. I had trouble with my legs, I sometimes couldn't bend my knees. Sometimes in the wintertime I would get cold and couldn't direct traffic. I couldn't walk three steps, my legs just wouldn't go. I had an impacted intestine and had that operated on. I was getting these bad headaches and went to the clinic and they had my head x-rayed and I thought it was sinus. The Doctor said the sinus is all right and he said he thought it might be nerves causing the headaches. That's about all, that is until the last time.

Q. In other words, there has been nothing significant in the way of injuries that you can think of that have brought about your present situations that puts you before this Board. am I correct in that?

A. I didn't quite understand you.

Q. I say, you have sustained no injuries or contracted no diseases as far as you know that might account for your being before this Board now?

A. I feel the reason my nerves went bad, fifteen years of good service with this Department and I was transferred and I went to the doctors for headaches and take the sleeping tablets and over slept of account of taking the tablets and I come in late one time and frequently the men tell me, "If you are putting on time, get the Captain and tell him you have to work two or three days off." He didn't give me this change. He sent me to Trial Board first time, sent me again. I told him I was getting ready to get married and needed money and the Lieutenant tried to send me a third time for leaving my residence on sick leave without notifying the Station and I was upstairs asleep. I was taking the sleeping tablets, trying to get some sleep, prescribed by Dr. Esch of the Police and Fire Clinic.

Q. What you are telling me in effect is that the conditions under which you were working in your opinion created an unpleasant situation that you did not react well to? That is the impression I get from what you have just said, that you have not had any injuries of a significant nature but have had some unpleasant working conditions or treatments.

A. What I have been through during the last two years, I worked over there and they followed me around and checked on me.

I don't think it was necessary because I have had 15 years perfect record and I have had commendations, been commended by Captain of this Department and citizens and it's had [ sic] to take when they try to ruin you for some minor thing. And about a couple of months ago I got out of my car, I was in civilian clothes, and a man pulled out of a driveway and I have to slam my brakes on to keep from running into him. I sat there and he called me an S. O. B. and pulled along side me and drugged [ sic] me out of the car. When he said that I jumped out of the car and I said, "You get out or I will blow your guts out." I didn't use to be that way. My wife used to call me an "Iron man." Just recently, the last couple of years, my nerves are just about shot. I go on the beat and I just go one way and think something is going to happen on the other end of the beat and I carry the badge almost 17 years in January and I forget where I put it.

Mr. Margolius: You mean by that you are having difficulty remembering things?

Pvt. Carroll: I used to have a tremendous memory.

Mr. Margolius: You say you used to have a tremendous memory but now it is going bad?

Pvt. Carroll: Very bad. Sometimes I light three cigarettes and forget I have lit them.

By Mr. Howard:

Q. Well, now, Mr. Carroll, you said you had had some commendations during your career. I would like to get a little idea of what these commendations have been that you have received during this period that you were talking of.

A. Ten years ago, I had been on about seven or eight years, and Sgt. Dailey and I went into a Warehouse where they had attempted to crack two safes and pulled the light switch out. We caught a gang of safe crackers, took them in. I was commended by Inspector, Deputy Chief Peters now and got a commendation.

Then I caught a housebreaker and he wrote me a commendation then and I was commended by a lady who -- I saw a back door open, I investigated, and it was in the Winter time it happened, she was sick and the door blew open. I went in to see nobody broke into the house.

I found the doctor's office [broken] into a couple of times. He wrote and said he appreciated my patrolling the beat.

I have scared off several gangs of housebreakers in a Liquor Store. They had taken a safe. They had some more stuff piled up to take it and I scared them off. And another time they tried to get

into the second floor. I went in the back door and they went out the front. And he wrote a letter, Barkman wrote a letter thanking me.

Q. Now, Mr. Carroll, am I correct in assuming that these episodes that you have just related occurred when you were assigned to #12?

A. Some were, and I have had three or four in #14.

Q. You have had some in #14 even though at the time you were transferred to #14 you felt that you were being unjustly treated?

A. Yes, sir.

Q. But in spite of that you earned some commendations for your work?

A. Yes, sir. I have always done. I have patrolled that beat to the best of my ability. I have been very conscientious and I am proud of the fact. If I do anything, I want to do it the best I can.

Q. Well, now, Dr. Shapiro made some mention in his report that there were some misgivings in your mind about your relationship with [N]egros. Would you care to comment on that?

A. Well, one instance, my brother is a disabled veteran, has eight children, lived over in #14. He's been threatened by some people over there that beat his children up and different things.

Q. Are you speaking of blacks?

A. Yes, sir. This is a Government housing project and some of the people that lived there are the worst in the World when they get into rape.

So I was in the Scout Car one night and just stopped by my brother's to see that everything was alright. Him and his children knew we were patrolling the area. Couple hours later we got a call for a broken window. I right away recognized the address of my brother's home. Colored boy threw a rock through the boys' bedroom window. There were fifty people milling around so I dispersed them, told them to break it up. It was almost 11:00 P. M. at night and they were making too much noise.

Next day the Captain called me in and said 3 or 4 people come in and wanted to know about me going over to my brother's house. I said, "Well, we got a call about a broken window." He said, "You were there before." "Yes, sir. I went over there to reassure him. I want everyone to know I am patrolling my beat. That is my job to assure them that we are patrolling and want to protect them and prevent crime." So he said. "I don't want Policemen over there." If something happened to my brother, I want to protect him. "You go over there off duty. I am going to sign you to Trial Board." I don't know why he said that. I was doing my job and I have done my job to

the best of my ability and I done it in that instance.

Q. Any other situations aside from this that you just related that involved your brother-in-law and his family?

A. This is my brother with eight children.

Q. Have you had any other incidents other than this situation that you have just mentioned?

A. By other incidents, do you mean incidents with colored people?

Q. That's right. In otherwords, I am trying to get a picture of you and your problems. That is your responsibility.

A. Yes, sir. When I was around 10 years old, I grew up with colored children, played ball with them and swam [ sic ] in the same stream of water. They were a different type. By the grace of God I could be colored myself. I don't hold anything against the colored race. I wish they were good people. Some are not. It is my job to arrest them when it is necessary. And that's what we are paid for, to solve crimes and prevent crimes and protect the public. I hold nothing against the colored race whatsoever. I am sorry that there are some like there are because it makes it bad for the rest of the good colored people.

I have been commended by colored people, Doctors, Lawyers, School Teachers. I like to meet good colored people. I could be colored myself. I have nothing against the race. There are some individuals that are not civilized. They hate a Policeman. You get certain beats over there that are solid colored. You have got to eat in a colored Restaurant. You feel the hate. It gets on your nerves. You can only stand so much. There was a constant howling, just like in the jungle, constant prowling. I was in the jungle. Some of these people are not civilized.

I was a Sergeant in a rifle company in the Army. I was in the mountains and jungles, but the last couple of years, this constant noise and traffic, you know, you can just take so much.

By Deputy Chief Johnson:

Q. Where do you come from originally?

A. I was born in Alexandria, Virginia, Chief, and raised up in Capitol Heights, Maryland.

Q. What happened when you pulled a gun on that man, did he complain about it?

A. No, he didn't investigate that. He investigated when I went to my brothers' house on that call.

Q. Was there a complaint made with reference to you?

A. The man was wrong. He had no business calling anybody a S. O. B. No man has a right to call another a S. O. B. If he had known I was a Policeman, he would never had opened his mouth.

Q. He never made a complaint then?

A. No, sir. The man on the beat came over and arrested him for Disorderly Conduct. He has no right to cut me off and then call me a S.O.B.

Q. Where did it happen?

A. Over Benning Road and East Capitol.

Q. Where do you live?

A. Bladensburg. I was at my brother's house.

Q. But Captain Causey asked you about Policing off duty?

A. I was on duty at the time. I had received a call.

Q. Well, I mean what you mentioned before, that he was criticizing you for Policing off duty as I understand?

A. He said, "I don't want you to police off duty, Officer." I said, "I don't believe in Policing off duty unless it is a felony." Any Policeman is going to take action in a felony, but off duty I just notified the Stations, drunks or something, and accident.

Q. What caused him to mention your Policing off duty?

A. Evidently [ sic] these people who caused this trouble over there had seen me stopping by to visit my brother and probably recognized me.

Mr. Margolius: Chief, he told me about it.

By Mr. Margolius:

Q. Did you tell me outside that a committee of colored people paid a visit to the Captain?

A. Yes.

Q. Complaining about you being over visiting your brother?

A. Yes, sir.

Q. I think that's what he meant, he had gone in uniform.

A. When I was off duty I was in civilian clothes.

Q. They knew you were a Policeman?

A. Yes, sir.

By Deputy Chief Johnson:

Q. Had you been Policing over there?

A. Not off duty. No, sir, nothing happened off duty for me to do anything. At the time I was on duty.

Q. Well, really, they had no reason to complain about your Policing?

A. I don't understand. Evidently [ sic] these people came in, said they had seen me over there before. They must have recognized me when I pulled up. Evidently [ sic] they recognized me.

Q. Did you appeal your denial of a longevity step?

A. No, sir. I was under the understanding there wasn't any use appealing once the Captain turns it down, that they will turn down your appeal any time you go to Trial Board. You are automatically inefficient that year even though it is a minor infraction.

Q. Well, for your information I sit on the longevity Board and I know of no single case where they ever denied a longevity case completely. I have known of a single case, never a complete denial.

As I understand his testimony he was denied a longevity step for a four year step. He has an appeal right.

A. I wish I had known that, Chief.

Q. Well, why were you denied a longevity?

A. Because I went before the Trial Board for being late for roll call.

Q. Just one time late?

A. Well, it was actually twice, but the Captain said even if it was only one time, that automatically they automatically keep you.

The Captain told me he tried to get another man's longevity through and they said no.

Q. What Captain was this?

A. Causey.

Q. Two times late?

A. Yes.

Q. Is that all?

A. Oh, I wasn't on time more than that.

Q. The impression you are giving the Board, as I understand it, is that you were late one time and were sent to Trial Board immediately. What I am asking is, were you late more than one time or late more than two times?

A. Well, the first time they give you a warning over there.

Q. How many warnings did you get?

A. One.

Q. How many times were you late?

A. Oh. I guess I was late twice.

Q. And then when did you go to Trial Board?

A. I think I went in April and again in July.

Dr. Shapiro: I have the dates. April 6, 1961.

Deputy Chief Johnson: Is that in connection with the two times in three months?

Pvt. Carroll: Yes, sir.

Deputy Chief Johnson: And you hadn't been late prior to that at all?

Dr. Shapiro: That was for being one half hour late. He was tried on March 24, 1961. It's attached as an exhibit.

Pvt. Carroll: This is 14. In the first ten years I had a perfectly clear record and they sent me a ten-year good service pin, Commissioner sent one of these. I had nothing on the record for ten years, nothing at all.

By Deputy Chief Johnson:

Q. When did you get something on your record detrimental?

A. I was charged with being under the influence of alcohol in Maryland while off duty.

Q. What were the circumstances?

A. My brother-in-law, him and his brother owned the Rustic Tavern out in Bladensburg. So I used to go there and drink a couple of beers after work. He was jealous of me. I am a married man and have two children. If some girls glance at me, I have always

made it a point, so help me God, not to give a fellow, especially a husband, the impression that I am trying to make his wife. I wouldn't want anybody to make my wife, but some how he got the idea, I guess that's what it was.

Q. Your brother-in-law?

A. Yes, sir. He told me, well, I was standing up at the bar. He said, "Why don't you sit down?" It was just the way he said it. I wouldn't tell him that way. He's the type of guy don't like no Policeman, has always tried to show it. I noticed that with a couple of other Officers that went in there. So I sat down at the bar. Pretty soon he made a motion to his brother. They had an orchestra playing there and next thing I know, this town Policeman came in and I found out later -- in my opinion he's no Policeman. I have heard a lot of stories since then -- and he knew who I was which amazed me. I wouldn't have treated him the way he treated me in front of all those people as if I was some hobo or anybody. He just got me over and put his hand on the back of my belt and I stood up. He told me, "I know who you are. You are a Metropolitan Policeman." I was so mad I didn't say one word from there on to the Policeman. So the Lieutenant came in.

Q. What Lieutenant?

A. Lieutenant Boyer, Lieutenant in #12. He's a good Lieutenant, good one. Him and Cpl. Ronson. I plead with this man, talked him into being a witness against me, but I figure one Policeman take another one in just on hear say or say so of a Tavern owner, I didn't say one word. This Policeman didn't see anything. I raise my right hand. We are supposed to see something, especially a misdemeanor [ sic], but this guy is no Policeman in my opinion, just a town Policeman.

By Mr. Margolius:

Q. Come to the point. Did you plead guilty?

A. Pardon me, I plead guilty.

Q. To what?

A. Being under the influence.

Q. Were you tried in Maryland?

A. No, sir. I asked the Policeman to charge me.

Q. Do you feel there was an unjust charge?

A. Yes, sir, positively.

Q. Why did you plead guilty?

A. Because, under the law, that could mean two beers.

I had four. I worked day shift, it was 10:00 o'clock at night.

I believe it was eight-thirty, 9:00 at night. So technically I was under the influence because you are under the influence with just one bottle of beer I understand.

Q. But you plead guilty to it, didn't you?

A. Yes, sir.

Q. Why did you plead guilty to it?

A. Well, I talked to Captain Langley. I believe he said, "Plead guilty and explain what happened." This was a Trial Board. That was the first time. I had had a ten year perfect record in the Department. I am proud of my record.

Mr. Margolius: That was in 1956.

By Deputy Chief Johnson:

Q. Who called the Police out there, your brother-in-law?

A. Yes, sir. Since then his wife has divorced him.

Q. Were you supposed to be flirting with his wife?

A. No, sir. He was a lady's man, thought he was. His wife has divorced him. His wife is my wife's sister and she is a good Catholic woman. She wouldn't live with him. He is a "Con Man."

Q. His wife and your wife are sisters?

A. Yes, sir.

Q. Why were you transferred to #14?

A. Well, I was in the Armory at the Inauguration and only had an hour and a half sleep at #12 Station that is from Thursday morning to 1:30 Sunday morning.

Q. That is last Inauguration?

A. Yes, sir. I was tired, had less than two hours sleep for three days and three nights. I had some drinks over there, they were offered to me by some man who was attending the Armory, probably like Policemen.

Mr. Margolius: Where was this, the Inaugural Ball?

Pvt. Carroll: I think it was the Ball.

Dr. Shapiro: His explanation is an exhibit here, January 27, 1961. He was reprimanded for taking a smoke while he stopped in a little bit to get warm. He had been without food and he had had a couple of beers and it was this thing that caused him to be transferred from the Precinct where he had been a member for so many years and he apologized for his behavior and begged not to be transferred from a precinct where he had been for 15 years. That appeared to be the first thing that upset him.

Mr. Umstead: I don't understand that conclusion. We have a record in 1956 showing that this man was suspended from duty effected from and after April 1956 for being under the influence to an extent

which would preclude further police duty. Later he was tried in June 1956, found guilty of these charges, and fined.

Dr. Shapiro: I did mention the previous episode.

Pvt. Carroll: That was off duty.

Dr. Shapiro: I did mention the episode about Hyattsville. This is the onset of trouble.

By Deputy Chief Johnson:

Q. Did you go to the Trial Board with the Inaugural business?

A. No, sir.

Q. Were you suspended that time?

A. No, sir.

Q. What did they do at the Inaugural, send you home or what? As I understand it, you were drinking, was that why you had difficulties there?

A. Somebody told me when I go outside and I came in, was trying to find a pack of cigarettes, but all the machines were empty. I went to different machines trying to get cigarettes. I was cold.

Q. Did you find cigarettes?

A. Never did find any.

Q. What happened with reference to the drinking?

A. What happened?

Q. Yes.

A. What did I do?

Q. What happened over there? Did you write a report?

A. I had to write a letter.

Q. Are you still drinking?

A. Just several, I might drink two or three bottles of beer.

I don't drink any whiskey. I might take two or three bottles of beer.

Q. Where did you go to Church last Sunday?

A. My wife wanted to go to the Monastery.

Q. Did you have any difficulty with Lt. Boyd in #12?

A. No, sir, not one time at all. I believe Lt. Boyd will say I am a good Police Officer.

Q. Did you have any difficulties with any other Lieutenant in #12?

A. Nothing, no, sir, nothing really bad. I can't recall of anything.

Q. Do you feel they were persecuting you?

A. No, sir. All the way back to Capt. Stone, he was a good Captain, he liked me. He knew I patrolled and was very observant. Also Capt. Sullivan, he commended me. Capt. Langley, my last Captain, I invited him to my daughter's wedding and his wife.

Q. When you transferred from #12 in 1961, you weren't under Capt. Williard at all?

A. No, sir.

Q. Now, in #14 Precinct did you have any difficulty with Capt. Causey?

A. Well, the difficulty I have tried to explain.

Q. I mean other than what you have talked about to the Board? How about Lt. Jenkins, any trouble with him?

A. No, sir. One of the best Lieutenants in the Department.

Q. I will have to agree with you. What about Sullivan?

A. No, sir.

Q. You were in #12 Precinct?

A. I was 15 years in #12.

Q. How about Sgt. Heflin?

A. No, sir, he is a fine man.

Q. The doctor mentioned a Lieutenant, who was that, that was trying to get your job?

A. Molewski.

Q. Have you had any difficulty with Lt. Molewski?

A. He is the one that came to my house and knocked on my door and I didn't hear him knock. I had only slept an hour and a half

the night before and I was home all the time and he told me to write a statement while at my residence on sick leave. And I wrote the statement. If they had disapproved that, I would have been third time that year before Trial Board and automatic dismissal.

Chief Barry: This incident that you speak of, one time, I think you were late that you drove up to the Precinct in the car and you went to sleep in the car, what time did you get to the Precinct?

Pvt. Carroll: I got there at 10:45 and woke up at 11:30.

Chief Barry: You got there at quarter till eleven and woke up at eleven-thirty?

Pvt. Carroll: Yes, sir. I couldn't sleep the whole day. I couldn't get any sleep. I wanted to make sure I would be there, so I got there 45 minutes before and had the radio turned down low and got drowsy and dozed off. Next thing I woke up it was eleven-thirty one. I was supposed to be there at eleven-thirty.

Chief Barry: Was there any Trial Board action on that?

Pvt. Carroll: No, sir. They were going to reprimand me, I believe.

(A five minute recess was taken.)

By Mr. Umstead:

Q. Mr. Carroll, in so far as any problem with punctuality is concerned, you didn't have that problem only in the #14 Precinct, did you?

A. No, sir.

Q. You had that in the #12 Precinct in 1956?

A. Yes, sir.

Q. And were tried by a Summary Trial Board and found guilty?

A. Some of these times my daughters were young. They used to come to Washington to Catholic Schools. They couldn't find pencils and books. I wanted to bring them in because it was rainy, etc. And quite a few times, you couldn't run out, my daughters were seven, eight years old. They had to come so far in to go to St. Anthony's and St. Patrick's. I just, I know I should have been on time. I tried to make a point, I wanted to work day work. I went to the Station at 4:30 in the morning and went to the Station to make sure I would be there on time.

Q. In July of 1961 you were also tried for failure to perform Police duty on account of sickness?

A. Yes, sir. What that was, I went to the clinic and I was taking sleeping tablets and layed down about 8:30, trying to get some

sleep and I over slept. I told my wife to call me, told my daughter to call me. My daughter went to sleep. I had two clocks. Well, I had three clocks set and I just didn't hear them.

Q. Now, apart from the incident in 1961 in January for which apparently no Trial Board or Summary Trial Board proceedings were instituted, is that correct, they apparently didn't bring the Trial Board proceeding against you?

A. No, sir, just a reprimand.

Q. Alright, in March 1961 you were before a Summary Trial Board for failing to be punctual then, weren't you?

A. That's right, sir.

Q. Found guilty and fined. And apart from any longevity withholding that Chief Johnson mentioned back in 8-15-56, they indicated your record of service was unsatisfactory for a six-month period, is that correct?

A. Yes, sir. That was not being punctual for roll call. When I was transferred to #12 I had 100 hours overtime when I volunteered to work anytime they needed. He used to call me, "Speedy." He said, "He is not always on time, but he is the last man to leave his Station." Captain Lyman made the statement.

Q. Earlier you testified that if a man had one beer, he was technically under the influence?

A. Yes, sir.

Q. Now, as a Police Officer, how long have you been under this impression?

A. That was not always my impression. I made the statement to Lt. Boyer I had three or four beers. In his mind he would think I was under the influence because I believe, as I understand, Lt. Boyer doesn't indulge. He doesn't drink anything at all. If I had been in the District, Lt. Boyer told me there wouldn't have been anything done, but he had to do it on account of the man in Maryland.

Mr. Margolius: Answer the question.

Pvt. Carroll: Sorry. I am just trying to explain. No, sir, in my opinion. I am trying to say too much. I have a few beers myself. As long as a man goes to a party or Anniversary, if he's staggering a little bit, as long as he minds his business, is not disorderly, if he can take care of himself, doesn't go on the street, if he's not so loaded nobody can take advantage of him, I am not going to arrest him. If he is likely to be rolled or something, it's my job to take him in. I have tried my best, I would rather ask a man where he lives and send him home safely rather than have a record on him as

long as he is not Disorderly. I have done it a lot of times.

Mr. Umstead: Doctor, do you think this man's personality make-up, these things he thinks of someone on his back in the #14 Precinct, considered with his other duties before he ever went to #14 Precinct, it is reasonable to make a conclusion that his problems are, to a certain extent, imagined?

Dr. Shapiro: I indicated I thought they were of a paranoid nature, but they did have some basis in fact. I would not call it an insane delusion. Perhaps you could call it a sane delusion.

Mr. Umstead: Could this be related to the Policeman himself rather than something inherent in the Police Department?

Dr. Shapiro: When you speak problem, you have to take a longitudinal section rather than a cross section and from what I get as far as his services up to 1956, up to this Bladensburg incident, he had no difficulty. I wasn't aware that he was frequently late.

Was he frequently late prior to 1961? How about before 1958?

Mr. Margolius: Just once.

Dr. Shapiro: But the thing is this, that this man apparently did not develop these symptoms until 1961 and he had a series of things happen, that's why I put these attachments here. I thought

they were significant. The man carried them around with him and brooded over them. The first was a statement, January 27, 1961, where he asked to stay at the Twelfth Precinct. Then the next thing shortly thereafter on March 7, 1961, when he was late and he explained this that he was late for roll call at 3:30 on May 12th because at 2:50 P. M., operating his automobile, he went through a depression on the road. Deep water splashed over his motor and drowned out the motor. He dried out the ignition wires and finally got someone to push the car and he phoned Cpl. Tilley and arrived at 3:49 P. M.

Well, he had a Trial Board following that. Then shortly thereafter there was this business about the Police Clinic while checking out. He says, here is his explanation on April 11, 1961, in the attachment, that he had been having acute sinusitis and unbearable headaches. And he mentioned Dr. Harrell and Dr. Mensh treating him. He says, "on Friday April 7th, 1961, while under duress of a severe sinus headache I attempted to contact the Fourteenth Precinct by telephone about 9:30 P. M., to go on sick leave but the line was busy. I phoned about five minutes later and the line was still busy. About 8:00 P. M. I took a sleeping tablet to try to get some rest and relief as I have to lie down and apply heat to my

head before the pain will subside. I told my daughter to call me at 10:00 P. M., so I would be able to contact the station at that time.

And at that time he mentioned here the thing that he told me later, he set two alarms and an automatic clock radio and he fell asleep and he didn't hear these. Well, I will say that I have seen a number of neurotics who have a fear of being late. To me, I think that was more a neurotic thing than anything else, especially when you set that many clocks. And he went to the Trial Board because of this thing. Incidentally, he pled guilty each time.

Then there was another episode on May 12, 1961. Here they were one right after another. Here he mentioned about getting a helicopter fixed for his brother's son and wasn't familiar with the neighborhood and reported for roll call five minutes late and was found guilty before the Trial Board. And it seems that there were a series of fairly minor incidents. That is the thing, they were not anything serious. Of course it could be viewed as serious as far as a Police Officer is concerned in reporting to duty on time, but taken collectively, I do not think they are so serious and are way out of proportion with the man's previous record. As far as I could determine, he had a good Military, Industrial, and a School record. And for ten years he had a good record at his Precinct until this off

duty incident with his brother-in-law and one thing after another happened after January and, as I stated, being the type of person he is, he reacted in the manner he did. But they were not imaginary, these things did happen. As I stated before if he had not been doing Police duty, it would not have brought about the things that happened.

I could not state that this man has a abnormal personality. I never was able to elicit any neurotic or psychopathic personality traits. There is a question about the amount of alcohol he used, but I have no way of proving that was excessive or not or whether that in any way caused any of these things. And apparently from the answers given, there was no evidence of intoxication other than having alcohol at the Inauguration. I do not think the man had a personality disorder as such so I think there were a number of circumstances concerned with police duty which would not have affected some other man as it did him. As to whether there is a basic personality defect, I cannot so state.

Mr. Margolius: Before you examined the doctor, you went right from him to the doctor.

Mr. Umstead: I am sorry, I didn't realize.

Mr. Howard: Are there any further questions by the Board of Officer Carroll? Alright, Mr. Margolius, Mr. Carroll is your witness.

By Mr. Margolius:

Q. I don't know if this is important. For the record, you saw me for the first time this afternoon, is that right?

A. Yes, sir.

Q. Since you have been off on sick leave and have not been working at the Police Department, have you felt any better or any worse or any different?

A. I have felt better. I am sleeping a little better and my nerves are better now.

Q. In connection with that, does any problem arise or do you have any feeling about going or getting into a Uniform?

A. I will never wear no uniform as long as I live. I am sorry to say that. I repeat I will never wear another uniform as long as I live and I wore it for almost 17 years and for 15 years I used to like to come to work. I enjoyed my job, did the best I could.

Q. Why won't you wear another uniform as long as you live? Why do you feel that way?

A. Well, I get the uniform on and get into the City, I keep thinking something is going to happen.

Q. What is going to happen?

A. It happens every day and night, serious crimes. You get mobbed over there.

Q. Are you worried, Mr. Carroll, about being able to perform your duty properly? Does that worry you?

A. It does to this extent. I used to be calm, cool, and collected, but now I am short tempered. I don't think things out like I used to, I get mad real quick. Not real quick but --

Q. Do you get mad at home with your wife or is it limited to what you do dealing with other people on the outside?

A. When I am outside on the job in the uniform in the District.

Q. You answered Deputy Johnson's question that you have had no problem with Captain Boyd when he was a Lieutenant and you think Lieutenant Jenkins is a fine Officer.

A. One of the best.

Q. Do you find that this feeling that you have about being inadequate and unable to cope with the -- I don't mean to use the

word -- cope with the problems in police work, did that start when you went to 14 or did you have that feeling at #12?

A. It just started since I have been over at 14.

Q. Do you have any explanation for it? Have you ever thought in your own mind why that has happened?

A. Well, I don't think I should have been sent to Trial Board twice within less than 4 months when some men didn't write a letter there. Some of the men asked the men to work some days off. The Captain didn't ask me if I wanted to work some days off.

Q. Does that bother you?

A. It would bother anybody.

Q. Does it bother you?

A. That's one reason I hate to come to work.

Q. Do you feel you have been unfairly treated, is that what you mean?

A. Yes, I do.

Q. Has any problem arisen in doing your police work, in going out and meeting members of the public, has that bothered you any? Let me ask you this before you answer it. You mentioned in someone's examination, you feel when you go into a restaurant in the #14 Precinct you are going into the jungle.

A. I have that feeling.

Q. Is it because of the type of people you have to come into contact with?

A. The type of people. Some of those people are not civilized. When I get around a bunch of uncivilized people, it's just --

Q. Did you feel like that in #12?

A. No, I didn't.

Q. You just feel like that in #14?

A. Yes.

Q. You have had a number of [ N] egroes in #12 precinct, you have never had that feeling?

A. No, sir.

Q. In other words, that developed since your transfer in 1961?

A. Yes, sir.

Q. How about white people in #14, do you have any trouble with them?

A. I haven't seen one whatsoever there.

Q. Have you had any contact with some people over there?

A. Some, but most of the beats are solid colored. I mean the bad ones.

Q. Which beats were you assigned to over there? You complained to Dr. Shapiro that was the longest beat in the precinct?

A. I was on #7 over there, on Minnesota Avenue, Branch Street and Deane Ave., down to the Division. That's about a mile long from Deane and Branch up to Sheriff Road, almost another mile. It's the biggest beat over there.

Q. What about being assigned to Midnight duty? Have you been constantly assigned to Midnight duty?

A. Well, for six weeks.

Q. Why was that?

A. That was supposed to be a reprimand.

Q. Did you work a partner?

A. I worked alone. Once in awhile you have a new man with you.

Q. Did you work in a car or on foot?

A. I was on foot nine-tenths of the time, ninety-nine percent of the time I would say.

Q. Did you ever express to the Captain how you feel about the constituents in the Precinct?

A. No, I didn't. I imagined he feels the same way I feel.

Q. You never did discuss it with him?

A. No, sir.

Q. What effect did this walking a beat alone from Midnight to 8:00 A. M., in the morning in this particular area have on you, anything? Did you feel different during that time than you did at other times? Were you more upset, more nervous, did you have different reactions?

A. Well, I didn't like some of the beats they gave me. I called them the worst beats over there. They give them to me. I am a Policeman and I have Policed all over the City just about. I am almost 44 and they gave me the biggest beat over there.

Q. From what you have testified here today you seem to be quite proud of the fact that you are a good Policeman, are you?

A. Yes, I am very proud of my record.

Q. And do these reprimands make you feel differently about your capability of being a Policeman?

A. It sure does.

Q. Does that worry you?

A. It worries me to a great extent. No one knows how much I have worried about it. Other men have done the same things I have done and I have been in Trial Boards.

Q. This is bothering you?

A. Positively.

Q. You think it was unfair to be transferred to #14?

A. If I had been Inspector, I wouldn't have transferred him under the circumstances.

Q. Would you say you have been doing a lot of thinking about this?

A. Very much.

Q. When you think about it, do you get upset?

A. Nobody knows how upset. I have worked hard on this job. I have gotten two bad legs from patrolling. I have got a lot of friends in this City.

Q. Suppose you were put in #8 Precinct, do you think you could patrol properly and do your job properly?

A. No, sir, I could not after what I have been through. My hand gets soaking wet from perspiration. I couldn't shoot a gun if I had to.

Q. You were in the War?

A. In the Infantry.

Q. Where did you serve?

A. Burma, China, India.

Q. Were you in the thick of it?

A. Yes, sir.

Q. Did you have any problems?

A. No problems at all.

Q. Did you have any case of nerves?

A. I had nerves of steel over there, believe me, with a bayonet --

Q. Did you get shot?

A. I had a shrapnel wound on the shoulder.

Q. That didn't bother you?

A. None whatsoever.

Q. And for that you were decorated?

A. Yes, sir, Purple Heart, combat infantry man's badge by General Wedemeyer.

Q. Let's take the year 1960, did you have problems in your police work, were you happy in your police work before the Inauguration?

A. Yes, I was very satisfied.

Q. You had no complaint about any Police Officials?

A. No, sir.

Q. The Lieutenant that you complained about over there, Molewski, do you really think he is out to get you?

A. If he wasn't, he wouldn't have come to my house and made me write a letter while on sick leave. He knew, I told him I went to the Doctor and took a sleeping tablet. He could have handled it himself; he was Acting Captain. He said he had to tell the Captain.

Q. You weren't looking for reasons to complain, were you, because you were in a precinct you weren't happy in?

A. No, sir. I liked to compliment a Police Official. I have been policing almost 17 years. This Deputy has some of the best Police Officials in the World. There is a Deputy Chief sitting over there, one of the best. One of the few. Some of those few in #14, I like to say good about people.

Q. But at #12?

A. #12, Captain Langley, Captain Stone, Captain Sullivan, best police in the World. Fair, back you up, help you out, and I lasted for 15 years over there and I have liked them. They used to kid me and everything else.

Q. And you feel that your problems started, as far as you are concerned, when you got over to #14 precinct?

A. I invited the Captain at #12 to my daughter's Wedding.

Q. You have left #12 now, but you feel you have gotten the way you are now since you have gotten to #14?

A. Yes, sir. I think if I weren't sent to #14, my nerves would be alright today.

Q. Let me ask you this, you have worked over in #14 and while you were testifying here, you cried. Did you ever break down in #14?

A. I did in the Captain's office.

Q. How frequently?

A. One time. I plead with him not to send me before the Trial Board twice in 4 months.

Q. Are you happily married?

A. Yes, sir. Two good daughters.

Q. Your wife is a good wife?

A. A good Catholic.

Q. You have no complaints except from some Police Officials?

A. That's about it. And some of these colored people. They call them people; they are not people.

Q. Did you get to feel this way in #14?

A. Yes, sir.

Q. You never distinguished between good and bad before you went to #14?

A. I know very good colored people.

Q. I mean you made this distinction in #14?

A. Some of the worst ones in the World, they killed that Police Officer there. They killed that poor old Jewish man.

Q. Let me ask you this, because you know that at #14, were you fearful in walking your beat at #14?

A. I wasn't fearful. I was nervous, tense, because I knew if any two-legged animal pulled a knife on me, I would kill him as soon as I would look at him. Rather he be killed rather than some poor innocent while [ sic] person. They shouldn't be loose on the public.

By Mr. Umstead:

Q. I have just a couple of questions. As I understand your testimony, you indicated that you have 90 hours overtime at #14 Precinct that you worked extra?

A. When I left #12, I had 108 hours I accumulated over a period of time.

Q. You accumulated none in #14?

A. Over-time?

Q. Yes.

A. Yes, sir, I have accumulated quite a bit at #14. I don't know how many.

Q. Was this on a voluntary basis, did you work over-time or did they force you to do that?

A. They don't force you. There is such a thing, if you have a detail, you don't know how many hours you will have to work, you get two or three hours over-time.

Q. Approximately how many hours have you accumulated?

A. I would say 15 or 20 hours.

Q. When did you walk this beat for 15 or 20 weeks on Night duty?

A. When I was first transferred.

Q. Were you afraid at that time?

A. I wasn't afraid. I just didn't like it. I don't think they should have gave [ sic] me this beat. And they followed me around and one Sergeant said he hadn't seen me for 45 minutes and here I have got a 4-mile beat. If I were a Sergeant I could be checking and never find a Patrolman.

Q. So you walked this beat six weeks immediately after coming from #12 to #14?

A. Yes, sir.

Q. I have one further question, Officer, did you ever in your own thinking get around to putting any blame on yourself for being late or for any of the other problems that you had in the Police Department?

A. Yes, sir, I can't blame anybody for my not being on time. When I get off, the reason I have three or four beers to relax. On this job you get tense, you meet the worst people in the World, murderers, rapists. Anybody gets upset, I don't care who. Fear is a natural thing.

Overseas before I went into the Japs I carried a Bible and read it every day and every night. That is what brought me through and I tried to be religious now and treat people the way I like to be treated.

Mr. Umstead: That's all.

Mr. Howard: Do you have any questions for Dr. Shapiro? You said you wanted to defer some questions.

Mr. Umstead: No, I think they have been pretty well answered.

Dr. Mathews: Dr. Shapiro, do we have any knowledge of what the sleeping medication was that Dr. Esch prescribed?

Dr. Shapiro: No, unfortunately many of the men do not record the medication. It is getting much better, but he was under the

treatment of the Doctors and it was so indicated that he was nervous and that's why he was referred to me.

Dr. Mathews: I just wondered if it were a long-acting barbiturate.

Dr. Shapiro: He also had sinus trouble and might have been given a barbiturate and that would make him very drowsy.

By Deputy Chief Johnson:

Q. Officer Carroll, you are aware of the provisions of the manual which states that if you are cited before the Trial Board three times in a year's time, that you can be dismissed?

A. Yes, sir.

Q. You have indicated that you were before the Trial Board twice and was it your apprehension that you would be sent a third time and be dismissed?

A. I am sorry.

Q. Your apprehension and your disturbance about your job and your fear of being in difficulty, was that occasioned by the fact that you knew that if you went before the Trial Board a third time that you knew you would be dismissed? Do you understand me?

A. I am sorry, Chief.

Q. You are aware that if a man is sent to Trial Board 3 times within a year's time, he is charged with inefficiency and a

recommendation is made for his dismissal?

A. Yes, sir.

Q. Where he is found guilty 3 times in a year's time, he is recommended for dismissal for inefficiency?

A. Yes, sir.

Q. Was that one of the things you were most apprehensive about and the possibility that you might have a third one before you completed a year's time?

A. Yes, sir, that preys on your mind, makes you keep thinking about it, wondering why it has happened after all these years because this City needs experienced Policemen and most Police Officials like to say on this Department are the best in the World. Several of those in #14 I can't figure it out, I am not the only man--

Q. Didn't you feel you could meet the standards for the rest of the period involved and keep from going before the Trial Board?

A. Well, Chief, the reason I thought I might not meet the standards, I didn't take one drink the whole time I was #14, not one on duty. In my mind I wanted to be as perfect as I could, but they followed me around constantly over there, checking on me. And once they constantly followed you, never did in #12 or in the 15 years and not one Official ever followed me and checked on me. I think Lt. Boyd will agree with me on that because I had more incidents

than any man in #12 for years. I found more doors open than anyone. It's on the record because I patrolled.

Q. Did you apply for transfer from #14?

A. Well, I put in one to go over to #11. Then I kept trying to think whether to transfer over there it would be twice as far to go home and to work. Sometimes I might be late at #14. I would have twice as far to go to #11. I decided to stick it out. I decided why should I run from this, I have been a good, conscientious Policeman and I would stay no matter what happened.

Then, first of all, you have to get permission from Inspector of #11 District and that Inspector was Inspector Mowry and he might say I don't want a man like that. He wouldn't accept me like that. Why should I go through that embarrassment. When in #14 I have been late a few times, I have worked from 30 to 45 minutes overtime every day, putting incidentals on and answering complaints which had to be done and this sounds real bad, but any Policeman will know if you are late for roll call, if you don't answer your name, you are late. Even one minute. They read the roll call, last 20 minutes and a half hour. I could read the roll call to get out of that thing what I would need, look-outs concerning Missing Persons in #14, because you can't remember ten Missing Persons and 50 tag

numbers. You remember the most important ones. You skim over half of them. All that stuff is needed somewhere in the City, but not in #14. You can only remember so much and I could read it in ten minutes and get everything it was necessary to have and still be out on the beat just as quick as the man who had roll call. I still get everything in there. You read the Lock-outs and everything. They will just sit there and talk and discuss some new law that just come out just as use of Gun and don't use your Gun unless absolutely necessary and just talk about, maybe, some regulations.

Now, I know, I am very sorry that's on my record. I have been late these times, I know it's wrong and I have tried to make out to the best of my ability, patrolling, doing everything I can to make up for it, working over-time everyday at least 30 minutes every day. Sometimes one hour forty-five minutes, trying to get cases solved. When the woman was killed, I rode around on my own trying to catch that man. It's not right not to be on time, but I still spend my eight hours on the street every day. The other half hour is roll call. I can get that in ten minutes, ten or 15 minutes.

Chief Barry: You have heard the Doctor ask Dr. Shapiro what the medication was that was prescribed for you for the sleeping tablets, as you call them. Do you know what they are?

Pvt. Carroll: No, I don't. I bought some pills one time in the Drugstore. They are ones you don't need any prescription for. I would lay in bed and go to sleep. As soon as a phone rang, I would be awake. I don't think it done me much good.

Mr. Howard: Mr. Margolius, do you have some questions to ask?

Mr. Margolius: Yes, Doctor, as a psychiatrist, do you feel that this man, upon being transferred from the precinct he was in for 15 years to another precinct acquired some sense of inadequacy as a result of that transfer for reasons he did not feel to be fair?

Dr. Shapiro: The man did not like it because he asked that it be reconsidered so it did upset him.

Mr. Margolius: What psychiatric result flowed from that?

Dr. Shapiro: Well, I don't know that there was any psychiatric result from that. That probably did cause some emotional reaction, but the number of incidents that followed one on top of another on top of that, the accumulative thing was the thing that I have tried to bring out.

Mr. Margolius: Now, you brought out here and repeated here numerous times his desire to be a Policeman, his desire to be a good Policeman. There is no better Policeman. He checked on doors and he did this and he did that. You have heard the testimony relating

to what his taken place in his police work. Do you feel that his reprimands have caused him to be in the state that he is in now?

Dr. Shapiro: I would state, from what he represented as trying to make up for it, that he was somewhat of a compulsive type of personality, rather perfectionist, and when these things he considered tribual, but which he nevertheless admits he was guilty of occurred, I think it threw him into a reactive depression.

Mr. Margolius: Do you think this condition he found himself in or the psychiatric condition that resulted was in part responsible for his being late from time to time?

Dr. Shapiro: Well, I couldn't answer that. It could be the sinusitis and antihistamines or some of the drugs that he was taking to sleep. I have no way of knowing that.

Mr. Margolius: It could be related?

Dr. Shapiro: Yes.

Mr. Margolius: Let me ask you this too, has he in any way whatsoever shown symptoms of malingering or sypmtoms of exaggerating voluntarily or intentionally?

Dr. Shapiro: No, the thing that stands out in his record, as I brought out, was his extensive combat infantry experience and even after being wounded he did not utilize that to get out of combat. He never even filled [ sic] a claim with the Veterans Administration

which I think indicates a considerable emotional stability or did for that period of time. He was not basically an emotionally unstable individual. Sure, he was probably a compulsive, perfectionistic type. To many of us that's often not a disability, that's an asset.

Mr. Margolius: Would you say his present disability, Doctor, is a result of police work?

Dr. Shapiro: I was very much impressed when he came in towards the latter part of the sessions with all of these papers that I have made copies of, dog-eared, carrying with him an old newspaper of Thursday, June 8, 1961, where it stated that he was found guilty and mentioned his name. He just brooded as an example of injustice. And the rest of the papers and incidentals I returned to you.

Mr. Margolius: So it was definitely [ sic] a large factor in his police work?

Dr. Shapiro: I don't see how you can disassociate it from police work any more than you can distress of police service.

Mr. Howard: Do you want to make any summarization, Mr. Margolius? Do you want to say anything on your own other than what Mr. Margolius has already said and other than what you have already testified to?

Mr. Margolius: Let me say as his Counsel that he has said

everything he needs to say.

Mr. Howard: Okay, you may step out.

Mr. Margolius: This case reminds me a great deal of a case before this Board last year that was ultimately determined by the Commissioners to be In Line of Duty. And that is the case of Cpl McNeal of #11 Precinct who was reprimanded by his Captain and thereafter acquired some sort of a mental disorder to kill his Captain. I am sure you all remember Cpl McNeal.

Mr. Howard: Two-gun McNeal?

Mr. Margolius: Two-gun McNeal. This may not be proper argument, but I would like to say you all have seen this man almost as much as I have seen him. I just met the man today for the first time.

I submit the Doctor's testimony who is a trained psychiatrist and there is a trained psychiatrist on the Board. And with his intense desire of apparently to do his duty as a Policeman -- and this City needs good Policemen, this City is a City of crime and Policemen with experience are required--I think created within him, the way I look at the evidence, a sense of being reprimanded where as he himself felt he was doing an adequate and good job; namely, that he was a good Policeman and his Officials don't appreciate him. That is where he finds himself as a result of Police work.

I think he finds himself in this completely terrible emotional state, for I think it is terrible for a man of his valor or his feeling of valor and felt confident, to have to sit before men like you and before a Deputy Chief of Police and break down and cry. Certainly I do not think that was an effected act. It may be effective psychiatrically as a result of his condition, but I am certain he doesn't turn it off and on.

I don't know how to escape the conclusion that but for police work, he would not have been in this condition. Certainly if he had been unstable, the time to have broken up was when he was overseas facing the Japs and Mortar Shells and guns. So I believe that from the evidence here that there is a most adequate showing that this is tied in with his work. I think this is one of the cases that merit consideration psychiatrically.

I didn't want to point out in front of him about the gun situation with McNeal, but it's like it and there was a man sent before the Trial Board, and he thought improperly, for breaking a radio and transmitter on his car and thereafter got a grudge against the Captain and even planned to kill him. So I think if that is considered to be In Line of Duty, I certainly think this one is.

Mr. Howard: Thank you, Mr. Margolius.

Mr. Margolius: Thank you.

(Witnesses Excused.)

\* \* \* \* \*

[ Filed: September 15, 1965]

PLAINTIFF'S STATEMENT OF MATERIAL FACTS  
AS TO WHICH PLAINTIFF CONTENDS  
THERE IS NO GENUINE ISSUE

1. (Plaintiff's Appointment to Metropolitan Police Department) - Plaintiff, born March 30, 1919, was examined both physically and otherwise and found fully qualified and was appointed to the Metropolitan Police Department on January 16, 1946 until his involuntary retirement, effective from and after September 30, 1962.

2. (Plaintiff's Military service) - Plaintiff served in the Infantry overseas during World War II and was involved in considerable combat, had a shrapnel wound in his shoulder while in combat, received the Purple Heart Decoration, made a full recovery and was honorably discharged.

3. (Plaintiff's illness in line of duty) - While on duty with the Metropolitan Police Department, plaintiff had a feeling that officers were following him around and checking up on him. As a result he became reluctant to come to work and became very nervous to the

extent that he felt he could not think straight. Also, plaintiff became involved in some difficulties with his superiors for reporting late for duty, etc. His captain suggested that he see a psychiatrist. As a result, he became confused and was unable to patrol his beat the way he had previously done and became fearful that something would happen at one end of the beat when he was at the other end.

4. (Police psychiatrist's examination and diagnosis) - after examination by Dr. Hyman D. Shapiro, psychiatric member of the Board of Police and Fire Surgeons, he stated in his report dated October 25, 1962 in part as follows:

"... My diagnosis is that of a psycho-neurotic depressive reaction, chronic, with some paranoid trends.

"It is my opinion that because of this condition, Private Carroll is no longer able to perform the duties of a Police Officer. I therefore recommend that Private Carroll appear before the Retirement and Relief Board for consideration of his retirement."

5. (Police Surgeon's medical survey) - A medical survey report of plaintiff by the Board of Police and Fire Surgeons, dated October 30, 1962 diagnosed his condition as "psycho neurotic depressive reaction" and recommended him for "retirement - disability".

6. (Involuntary appearance before Police Surgeon's and Retirement Board and split decision) - Plaintiff was involuntarily ordered to appear before the Board of Police and Fire Surgeons with the result mentioned above, and was before the Police and Firemen's Retirement and Relief Board for consideration of his retirement and as a result of a hearing held November 29, 1962, said Board ordered him retired for disability not incurred in the performance of duty, by a split 3-2 decision with the psychiatric member and the Deputy Chief of Police member dissenting and stating in part:

"This retirement should be for disability incurred in the line of duty".

At said hearing in response to a question as to the casual connection between plaintiff's emotional condition and the performance of his duty as a policeman, the aforementioned Dr. Shapiro testified in part:

"I don't see how you can disassociate it from police work anymore than you can distress of police service".

7. (Lack of evidence plaintiff's disability incurred other than in the line of duty) - There was no evidence of any consequence before the Retirement Board that Officer Carroll's disability was the result of anything other than the performance of his police work and of his attitude to the performance of his police duties. In addition,

it was agreed that he was disabled for further police duty, the only question being whether his disability was a result of performance of duty or not.

8. (Defendants recognized plaintiff's line of disability but erroneously affirmed Retirement Board decision) - The defendant Board of Commissioners recognized plaintiff's disability was incurred in the line of duty by approving excess sick leave for his emotional condition which approval would have been improper unless the emotional condition was the result of performance of police duties. Defendant Commissioners affirmed the Retirement Board's split 3-2 decision retiring plaintiff for disability not incurred in the line of duty.

\* \* \* \*

[ Filed December 14, 1965]

MOTION OF DEFENDANTS WALTER N. TOBRINER,  
JOHN B. DUNCAN AND CHARLES M. DUKE  
FOR SUMMARY JUDGMENT

These defendants move the court to grant summary judgment in their favor on the following grounds:

The complaint, when read together with Exhibits 1 through 30<sup>2</sup> all of which are attached hereto and by reference made a part hereof and all other pleadings and exhibits filed in the instant case, demonstrates that there is no genuine issue as to any material fact and that these defendants are entitled to judgment as a matter of law.

\* \* \* \* \*

[ Filed December 14, 1965]

DEFENDANTS' STATEMENT OF MATERIAL FACTS

The defendants, pursuant to local Rule 9, state that the following are facts as to which there is no genuine issue:

1. Plaintiff was an officer with the Metropolitan Police Department, D. C., having been appointed to that position on January 16, 1946. After a period of training at the Departmental Police Training School plaintiff was assigned to the 12th Precinct with the rank of Private.

2. Plaintiff remained at the 12th Precinct until January 29, 1961, at which time he was transferred to the 14th Precinct.

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<sup>2</sup> By leave of Court, three copies of the exhibits designated by both sides for inclusion in the joint appendix (other than the transcript of proceedings) are contained in folders filed with the Court in lieu of printing in the joint appendix.

3. (a) The following infractions of police regulations by plaintiff are disclosed in the administrative record:

1. January 30, 1946, late for duty. (Ex. 1)
2. November 18, 1946, late for duty. (Ex. 2)
3. December 20, 1953, late for duty. (Ex. 3)
4. December 26, 1953, late for duty. (Ex. 4)
5. January 29, 1954, failed to check off duty. (Ex. 5)
6. April 13, 1954, late for duty. (Ex. 6)
7. May 4, 1954, late for duty. (Ex. 7)
8. April 26, 1955, late for duty. (Ex. 8)
9. April 20, 1956, under the influence of alcoholic beverage while off duty. (Ex. 9)
10. June 6, 1956, late for duty. (Ex. 10)
11. June 17, 1956, late for duty. (Ex. 10)
12. June 22, 1956, late for duty. (Ex. 10)
13. July 14, 1956, late for duty. (Ex. 10)
14. September 15, 1956, late for duty. (Ex. 11)
15. December 23, 1956, late for duty. (Ex. 12)
16. January 21, 1961, under the influence of alcoholic beverage while on duty. (Ex. 30)
17. February 4, 1961, late for duty. (Ex. 13)

18. March 7, 1961, late for duty. (Ex. 14)
19. April 4, 1961, late for duty. (Ex. 15)
20. April 7, 1961, late for duty and failed to report sickness. (Ex. 15)
21. May 12, 1961, late for duty. (Ex. 17)
22. May 25, 1961, late for duty. (Ex. 18)
23. May 27, 1961, late for detail. (Ex. 19)
24. June 25, 1961, late for duty. (Ex. 20)
25. June 27, 1961, late for duty. (Ex. 20)
26. July 18, 1962, late for duty. (Ex. 21)
27. August 19, 1962, late for duty. (Ex. 22)
28. August 31, 1962, late for duty (Ex. 23)
29. September 9, 1962, late for duty. (Ex. 24)

(b) The following disciplinary actions were taken as disclosed in the administrative record.

1. On numerous occasions between January 30, 1946 and May 4, 1954, plaintiff was warned about his tardiness in reporting for duty. (Ex. 1, 3-6)
2. May 5, 1954, penalized by deducting four hours off earned overtime for tardiness in reporting to duty. (Ex. 7)

3. May 2, 1956, found guilty by police trial board of being under the influence of alcoholic beverage while off duty and fined \$50.00. (Ex. 25)

4. June 6, 1956, commanding officer penalized him for tardiness in reporting for duty by giving him less desirable days off. (Ex. 10)

5. August 15, 1956, found guilty on two specifications of failing to be punctual in reporting for duty and fined \$45.00. (Ex. 26)

6. March 24, 1961, plead guilty to failing to be punctual in reporting for duty and fined \$25.00. (Ex. 27)

7. June 7, 1961, plead guilty before a police trial board on charges of failing to be punctual in reporting for duty, failing to report sickness and fined \$50.00. (Ex. 28)

8. December 5, 1961, worked an 8 hour tour of duty on his day off as penalty for failing to report to a detail on time. (Ex. 19)

9. August 27, 1962, worked an 8 hour tour of duty on his day off as penalty for failing to report to duty on time. (Ex. 22)

(c) Plaintiff was given an unsatisfactory service rating for the six month period from January 16, 1956 to July 16, 1956,

because of his trial board conviction for being intoxicated while off duty on April 20, 1956. (Ex. 25)

(d) On June 28, 1962, plaintiff was denied pay increase based on service because of his conviction by a police trial board on June 7, 1961 and various other derelictions of duty. (Ex. 30)

(e) On January 29, 1961, plaintiff was transferred from the 12th Precinct to the 14th Precinct because of his dereliction of duty while assigned to the National Guard Armory during inaugural festivities on January 21, 1961. While assigned to the Armory on that date plaintiff appeared to be under the influence of an alcoholic beverage, in that his speech was not fluent and he was unsteady on his feet. He was directed, at that time, to leave the Armory and go home.

4. On August 31, 1961, plaintiff was referred to Hyman D. Shapiro, M. D., for psychiatric consultation. Dr. Shapiro reported that "for the last five months since being at No. 14 and being before the trial board twice he had a feeling that the officials there were checking on him and following him around. As a result he hates to come to work and this had made him so nervous he can't think straight \* \* \* he keeps repeating when he is ready to go to work he can't and he cannot take any interest in his work \* \* \*." Dr. Shapiro

reported that it was difficult to make a diagnosis other than that plaintiff had a psychoneurotic depressive reaction. The doctor could not tell whether this reaction was caused by the injudicious use of alcohol or barbituates.

On September 14, 1961, plaintiff indicated to Dr. Shapiro that he could not do duty and the best thing he could do was to retire for disability.

On September 21, 1961, after treatment by Dr. Shapiro with certain medications, the plaintiff became ambivalent regarding retirement but agreed with the doctor that he should try to work.

By October 6, 1961, plaintiff told Dr. Shapiro that he was doing well, was on full duty and had no complaints.

On September 12, 1962, plaintiff again returned to Dr. Shapiro and related to the doctor numerous incidents in which he had reported late for duty while at the 14th Precinct and complained that one of the officials at the precinct "was watching me like a hawk. At the first opportunity he is out to get my job. If I was to have a trial board for the third time in a year it would be an automatic dismissal." He referred to the fact that he had been denied a service pay increase and felt that such action was not right. Plaintiff also made reference to the general conditions existing in the precinct and felt that when

difficulties arose " \* \* \* the police won't back you up." Dr. Shapiro questioned him concerning his "drinking" and plaintiff stated that he drinks just enough to feel good. When asked by the doctor to be more specific he stated that he often drinks 8 to 10 bottles of beer when he is off duty and that he averaged 4 to 10 bottles of beer.

On September 25, 1962, plaintiff again returned to Dr. Shapiro stating that he felt he could not do duty and that he hates to come into Washington. Dr. Shapiro prescribed medication for him which he apparently continued to take until his next visit to the doctor on October 6, 1962.

On October 6, 1962, plaintiff stated that he had stopped his drinking but still felt that he could not return to duty.

On October 12, 1962 he was again seen by Dr. Shapiro, at which time he presented the doctor with considerable correspondence concerning his numerous difficulties with his superiors and before the trial boards. He stated to Dr. Shapiro "I think that this will show you that the officials are out to get me." Dr. Shapiro disagreed with this conclusion.

On October 23, 1962 he again stated to Dr. Shapiro that he could not do duty. Dr. Shapiro then stated "He is being written up for retirement."

5. On November 29, 1962, plaintiff with counsel appeared before the Police & Firemen's Retirement and Relief Board. Dr. Shapiro and plaintiff testified at the hearing before that Board. Dr. Shapiro also read into the record the reports which he had written as a result of his examinations of the plaintiff since August 31, 1961. The transcript of that hearing is attached to and incorporated as a part of plaintiff's motion for summary judgment.

6. On November 30, 1962, the Police & Firemen's Retirement and Relief Board by a three to two vote ordered that plaintiff be retired from further duty by reason of disability not incurred in the performance of duty as a policeman, said retirement to take effect from and after that date.

7. Plaintiff through counsel appealed the decision of that Board to the Board of Commissioners, D. C. On December 12, 1963 the Commissioners held a hearing concerning the action of the Retirement & Relief Board, at which time the plaintiff and counsel were present. On February 12, 1964, the Board of Commissioners affirmed the action of the Retirement and Relief Board.

8. In May, 1964, the plaintiff filed the instant complaint in this court.

\* \* \* \*

[ Filed February 8, 1966]

MEMORANDUM

Bernard Margolius, Esq., and Carleton U. Edwards, II, Esq.,  
Washington, D. C., for the Plaintiff.

Milton D. Korman, Esq., Acting Corporation Counsel, D. C.,  
John A. Ernest, Esq., Assistant Corporation Counsel, D. C., and  
Robert R. Redmon, Esq., Assistant Corporation Counsel, D. C.,  
Washington, D. C., for the defendants.

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This matter came on for hearing on cross-motions for summary judgment. There is no dispute but that plaintiff is entitled to disability retirement. The only issue is whether the disability from which he is presently suffering requires or justifies a determination that it was incurred in line of duty.<sup>1</sup> The applicable legislation, D. C. Code. § 4-527 (1961 ed., as amended, October 23, 1962) provides in pertinent part:

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<sup>1</sup> The undisputed diagnosis is psychoneurotic depressive reaction, chronic, with some paranoid trends (Exhibit 5 to the affidavit of plaintiff's counsel).

"(2) In any case in which the proximate cause of an injury incurred or disease contracted by a member is doubtful, or is shown to be other than the performance of duty, and such injury or disease is shown to have been aggravated by the performance of duty to such an extent that the member is permanently disabled for the performance of duty, such disability shall be construed to have been incurred in the performance of duty. The member shall, upon retirement for such disability, receive an annuity computed at the rate of 2 per centum of his basic salary at the time of his retirement for each year or portion thereof of his service: Provided, That such annuity shall not exceed 70 per centum of his basic salary at the time of retirement, nor shall it be less than 66 2/3 per centum of his basic salary at the time of retirement."

In the instant case, it appears that the proximate cause of this disease, which has now reached a degree of severity requiring retirement, is doubtful. From a review of the entire record, particularly the testimony of the psychiatrist member of the Police and Firemen's Retirement Board, Dr. Shapiro, it clearly appears that the condition from which plaintiff suffers has been aggravated by police service.

In Blohm v. Tobriner, \_\_\_\_ U. S. App. D. C. \_\_\_\_,  
350 F. 2d 785 (1965), it was held that where the police department

initiates proceedings<sup>2</sup> to retire an officer against his will for disability which is alleged to be unrelated to his official service, the evidence of such lack of connection should clearly preponderate and be substantial and persuasive. It is clear from this record that this burden has not been borne by the defendants. On the contrary, the Court finds, as previously stated, that the record discloses that the disease from which the plaintiff suffers was aggravated by his police service.<sup>3</sup>

The Court's evaluation of the record is in line with the previous administrative decision to grant plaintiff sick leave in addition to the usual annual allowance which requires a finding that the illness or

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<sup>2</sup> See Exhibit 8 to the affidavit of plaintiff's counsel.

<sup>3</sup> See, e.g., the letter of Inspector Mowry dated 2-28-61, filed by defendants as Exhibit 30.

"Private Carroll has been transferred to the Fourteenth Precinct, where his assignment for the next three months will be such as to constantly remind him of his derelictions in this instance."

And see the testimony of Dr. Shapiro in Exhibit 9 to the affidavit of plaintiff's counsel.

injury, because of which the leave was granted, was related to the line of duty.<sup>4</sup>

In Crawford v. McLaughlin, 109 U. S. App. D. C. 264, 286 F. 2d 821 (1960), the Court of Appeals emphasized that the evidence in such a case as the present one be considered in the light of the "humane purpose of such retirement laws."<sup>5</sup>

The case of Taylor v. Tobriner, \_\_\_\_ U. S. App. D. C. \_\_\_, 346 F. 2d 879 (1964), on which defendants rely, is predicated on a different factual situation. There, neither this Court nor the Court of Appeals found any evidence to indicate that the disability was aggravated by the performance of duty.

For these reasons, the Court grants plaintiff's motion and denies defendant's motion.

Counsel will prepare an appropriate order.

/s/ Oliver Gasch  
\_\_\_\_\_  
Judge

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<sup>4</sup> See Exhibit 4 to the affidavit of plaintiff's counsel.

<sup>5</sup> 109 U. S. App. D. C. at 265 and 286 F. 2d at 822; see also Hyde v. Tobriner, 117 U. S. App. D. C. 311, 346 F. 2d 797 (1965).

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[ Filed February 24, 1966]

**ORDER**

Upon consideration of the parties' cross-motions for summary judgment, it is by the Court this 23rd day of February, 1966,

**ORDERED** that defendants' motion for summary judgment be, and it is hereby denied and that plaintiff's motion for summary judgment be, and it is hereby granted, and that judgment be, and it is hereby entered in favor of plaintiff, Adrian S. Carroll; and it is

**FURTHER ORDERED** that the defendants be, and they are hereby directed to amend their finding and order of February 12, 1964, to reflect that plaintiff's retirement be for disability aggravated by the performance of duty, effective from and after November 30, 1962; and it is

**FURTHER ORDERED** that said defendants be, and they are hereby directed to order that plaintiff be paid the difference between what he has been paid since said November 30, 1962, and what he should have been paid had his retirement been for disability incurred in the line of duty as of November 30, 1962, said money to be paid to the plaintiff in a lump sum.

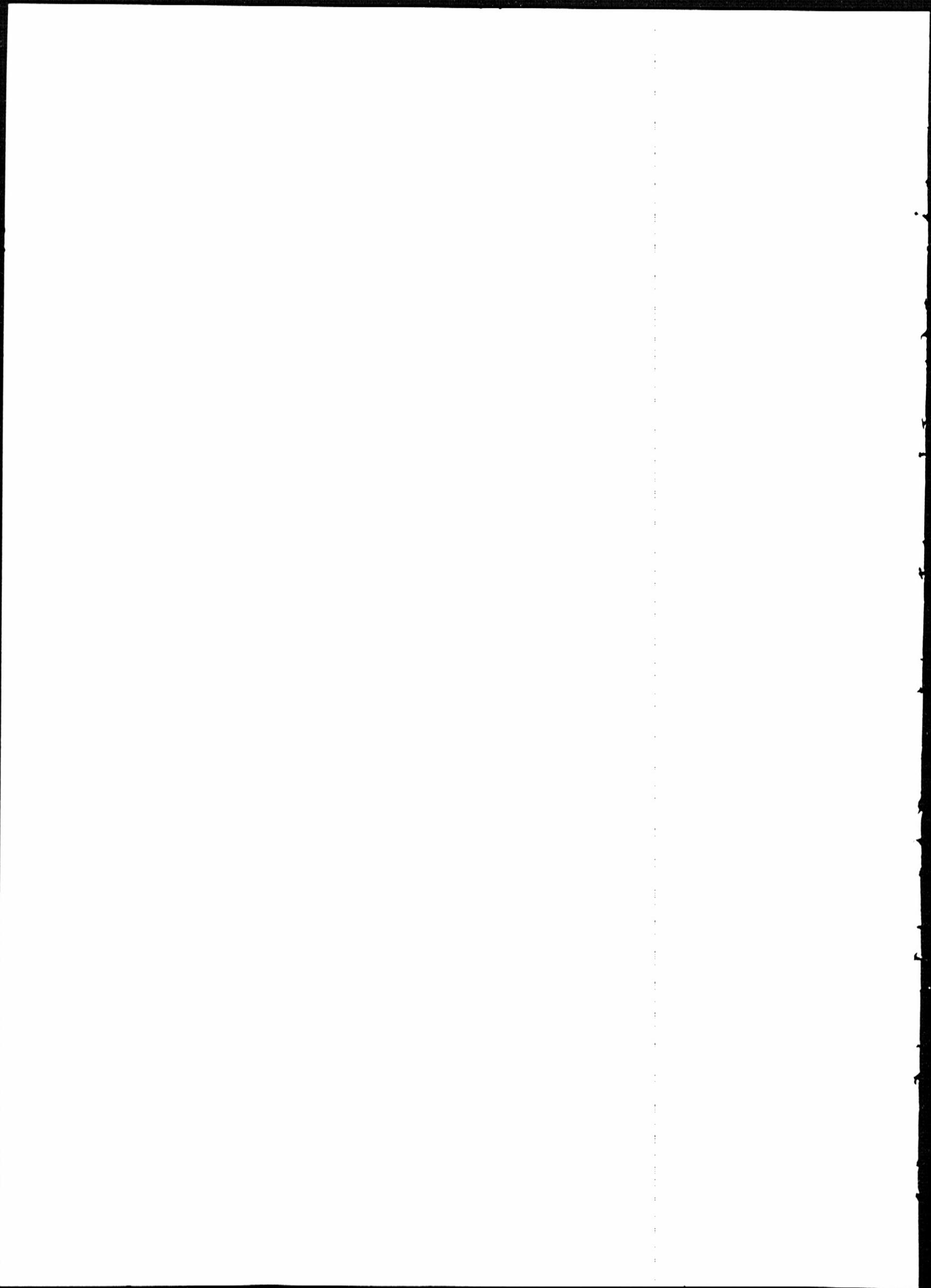
/s/ Oliver Gasch  
\_\_\_\_\_  
Judge

\* \* \* \*

[ Filed March 24, 1966]

NOTICE OF APPEAL

Notice is hereby given this 24th day of March 1966, that  
Walter N. Tobriner, John B. Duncan and Frederick J. Clarke,  
Individual Members of the Board of Commissioners, District of  
Columbia, the above named defendants, hereby appeal to the United  
States Court of Appeals for the District of Columbia Circuit from  
the order of the United States District Court for the District of  
Columbia, entered in this action on February 24, 1966.



BRIEF FOR APPELLANTS

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UNITED STATES COURT OF APPEALS  
For The District Of Columbia Circuit

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No. 20, 141

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WALTER N. TOBRINER,  
JOHN B. DUNCAN,  
FREDERICK J. CLARKE,  
Board of Commissioners, D. C.,

Appellants,

v.

ADRIAN S. CARROLL,

Appellee.

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Appeal From The United States District Court  
For The District Of Columbia

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MILTON D. KORMAN,  
Acting Corporation Counsel; D. C.

HUBERT B. PAIR,  
Acting Principal Assistant  
Corporation Counsel, D. C.

United States Court of Appeals  
for the District of Columbia Circuit

FILED JUN 6 1966

*Nathan J. Paulson*  
CLERK

RICHARD W. BARTON,  
Assistant Corporation  
Counsel, D. C.

DAVID P. SUTTON,  
Assistant Corporation  
Counsel, D. C.

Attorneys for Appellants,  
District Building  
Washington, D. C. 20004

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STATEMENT OF QUESTION PRESENTED

Where there is, in the whole of the administrative record, a rational basis for the conclusion that police officer's disability was neither incurred in nor aggravated by the performance of police duty, did not the court below err when it substituted its judgment for that of the administrative body?

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\* Cases and authorities chiefly relied upon are marked by asterisks.



UNITED STATES COURT OF APPEALS  
For The District Of Columbia Circuit

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No. 20, 141

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WALTER N. TOBRINER,  
JOHN B. DUNCAN,  
FREDERICK J. CLARKE,  
Board of Commissioners, D. C.,

Appellants,

v.

ADRIAN S. CARROLL,

Appellee.

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Appeal From The United States District Court  
For The District Of Columbia

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BRIEF FOR APPELLANTS

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JURISDICTIONAL STATEMENT

This is an appeal from a final order of the United States District Court for the District of Columbia, entered February 24, 1966, granting summary judgment in favor of the plaintiff, in an action for mandatory injunctive relief (J. A. 3, 105). Notice of appeal was filed March 24, 1966 (J. A. 106). The jurisdiction of

the District Court was invoked under D. C. Code, 1961, § 11-306 (J. A. 4). This Court has jurisdiction under 28 U. S. Code, § 1291.

#### STATEMENT OF THE CASE

By complaint for mandatory injunction filed in the court below, appellee, a former member of the Metropolitan Police Department, sought to compel appellants to reverse their order, sustaining the action of the Police and Firemen's Retirement and Relief Board, in retiring appellee for disability incurred other than in the performance of duty, and to retire him for mental disability incurred in the performance of duty (J. A. 4). Cross-motions for summary judgment were subsequently filed by appellants and appellee (J. A. 10, 92). Upon consideration of the cross-motions, the court below, on February 24, 1966, entered summary judgment in appellee's behalf and directed appellants to "amend" their order retiring appellee for disability not incurred in the performance of duty, and to retire him for disability " \* \* \* aggravated by the performance of duty" (J. A. 105).

Appellants' order sustaining the action of the Police and Firemen's Retirement and Relief Board was based upon evidence in the administrative record, in substance, as follows:

On January 16, 1946, appellee was appointed to the Metropolitan Police Department and thereafter assigned to the Twelfth Precinct (J. A. 93). While so assigned, appellee committed numerous infractions of the regulations governing the conduct of a police officer. Specifically, he reported late for duty on 12 occasions and, as a result of such tardiness, received numerous warnings, after which penalties were imposed (J. A. 94-96, Folder 2-4, 6-7A, 11-20, 43-46). On May 2, 1956, while assigned to the Twelfth Precinct, appellee was found guilty by a Metropolitan Police Department Trial Board of being under the influence of intoxicating liquor while off duty on April 20, 1956, to such an extent that he would have been unable to perform police duty if called upon to do so (J. A. 94, 96, Folder 8-10, 40, 41). On another occasion, while assigned to "outside detail, D. C. Armory" during the inaugural ceremonies held on January 21, 1961, appellee was observed inside the Armory under the influence of intoxicating liquor. He was relieved of his duty and sent home (J. A. 94, 97, Folder 52-54). As a result of his conduct during the inaugural ceremonies, appellee was, on January 29, 1961, transferred to the Fourteenth Precinct (J. A. 93, Folder 52, 55).

While assigned to the Fourteenth Precinct, appellee's tardiness continued. The administrative record discloses that he reported late for duty on numerous other occasions, that such tardiness resulted in two more Trial Board proceedings, in the taking of other disciplinary actions against him at the precinct level, and in the denial of a "service step increase" (J. A. 94-97, Folder 21-39, 47-51).

Appellee's excuse for his tardiness was almost invariably that he did not hear his alarm clock, that it was not functioning properly, or that his automobile was not in proper operating condition (Folder 1, 4, 6, 7, 11, 13-16, 18-22, 27-30, 37, 39). These constant infractions of police department regulations prompted appellee's superiors to make the observation, in April, 1961, that his personnel file "is a record of habitual indifference and laxity" and that he possessed "no concept of the responsibilities of a police officer" (Folder 25).

On August 31, 1961, appellee was referred to Dr. Hyman Shapiro for psychiatric consultation (J. A. 16, 97). At the time of his initial visit appellee told the physician that "since being at No. 14 and being before the Trial Board twice he had a feeling that the officials there were checking on him and following him around."

Appellee stated that "as a result" he hated to come to work and had become nervous. Dr. Shapiro concluded, after such consultation, that it "was difficult to make a diagnosis other than \* \* \* [that appellee] did have a psychoneurotic depressive reaction." (J. A. 20, 21, 97, 98.) Two weeks later, during another visit, appellee informed Dr. Shapiro that "he could not do duty" and that "the best thing he could do was to retire for disability" (J. A. 22, 98). Returning to Dr. Shapiro on September 26, 1961, and on October 6, 1961, appellee told the physician he was doing well, and was on full duty. He had "no complaints." (J. A. 22, 23, 98.)

About "11 months later," appellee, on September 12, 1962, again visited Dr. Shapiro and told the physician about certain recent incidents involving tardiness on his part and the resulting adverse actions taken by superiors. He then complained of a recent reprimand expressing his belief that it was "only a question of time" before he would "be fired." (J. A. 23, 26.) He stated that a Lieutenant was "watching \* \* \* [him] like a hawk," and that if he were "to have a Trial Board for the third time in a year it would be an automatic dismissal" (J. A. 25, 98). In response to the physician's questions concerning his drinking habits, appellee stated

that when off duty he "often" drank "eight to ten bottles of beer" and averaged from "four to ten bottles of beer." He also stated that he felt "he could never go back to duty." (J. A. 27, 99.)

On September 25, 1962, appellee returned to Dr. Shapiro stating he "still" felt he could not perform police duty. He made a like statement to the physician on October 6, 1962. (J. A. 28, 99.)

When he visited Dr. Shapiro on October 12, 1962, appellee presented the physician with "considerable correspondence" regarding the "Trial Boards" and other difficulties with superiors in which he had previously been involved. The correspondence set forth a series of infractions on appellee's part and resulting reprimands, commencing with the incident in January, 1961, when, during the inaugural ceremonies, he was found to be under the influence of intoxicating liquor. Appellee expressed to the physician his belief that the correspondence "will show you that the officials \* \* \* [were] out to get \* \* \* [him]." (J. A. 29, 99.) On October 23, 1962, when he again told Dr. Shapiro that he still could not perform police duty, the physician advised that appellee was to be "written up for retirement" (J. A. 30, 99). In the recommendation to the Board of Police and Fire Surgeons, which followed on October 25, 1962, Dr. Shapiro stated that his diagnosis of appellee

was "that of a psychoneurotic depressive reaction, chronic, with some paranoid trends" (Folder 67).

On November 29, 1962, appellee appeared with counsel before the Police and Firemen's Retirement and Relief Board and was given a hearing at which there was testimony by appellee and Dr. Shapiro, and appellee's personnel and medical files were admitted into evidence (J. A. 30, 100). Dr. Shapiro read into the record the reports which he had prepared as a result of previous psychiatric consultations with appellee (J. A. 15-30). He had not, however, considered appellee's personnel file and thus did not have a complete picture of appellee's multiple infractions throughout the years (J. A. 31). Based on the consultations with appellee, the physician attributed his depression and mental disability to "brood[ing]" over the reprimands and disciplinary actions taken against him by his superiors in the Police Department (J. A. 31-34, 85, 86). In this connection Dr. Shapiro testified that he:

" \* \* \* was very much impressed when \* \* \* [appellee] came in towards the latter part of the sessions with all of these papers that I have made copies of, dog eared, carrying with him an old newspaper of Thursday, June 8, 1961, where it stated that he was found guilty and mentioned his name. He just brooded as an example of injustice. \* \* \* " (J. A. 86.)

Questioned as to whether police duty was the "cause" of such disability (J. A. 32), the physician stated:

'Well, I will say the actual duty was not, but the fact that he had over slept on one occasion and was late on another occasion, I don't know whether you can call that police duty, but the action that followed this did have an effect on this man. So indirectly [sic] I would state that police duty did cause this.' (J. A. 33.)

After conclusion of the hearing, the Retirement Board entered the following order:

"ORDERED

'That Adrian S. Carroll, a Private in the Metropolitan Police Department, having been found incapacitated for further duty by reason of disability not incurred in the performance of duty as a policeman, is hereby retired, to take effect from and after November 30, 1962.' (J. A. 67, 100.)

An appeal was taken to the District of Columbia Board of Commissioners which, following a hearing, affirmed, on February 12, 1964, the action of the Retirement Board (J. A. 100).

STATUTES INVOLVED

D. C. Code, 1961, Section 4-526:

"§ 4-526. Retirement for disability not incurred in performance of duty:

"Whenever any member coming under sections 4-521 to 4-535 completes five years of police or fire service and is found by the Commissioners to have become disabled due to injury received or disease contracted other than in the performance of duty, which disability precludes further service with his department, such member shall be retired on an annuity computed at the rate of 2 per centum of his basic salary at the time of retirement for each year or portion thereof of his service:

Provided, That such annuity shall not exceed 70 per centum of his basic salary at time of retirement: Provided further, That the annuity of a member retiring under this section shall be at least 40 per centum of his basic salary at time of retirement. (Sept. 1, 1916, ch. 433, § 12 (f), as added Aug. 21, 1957, 71 Stat. 394, Pub. L. 85-157, § 3.)"

D. C. Code, 1966, Supp. V, Section 4-527:

"§ 4-527. Retirement for disability while performing or not performing duty.

"(1) Whenever any member is injured or contracts a disease in the performance of duty or such injury or disease is aggravated by such duty at any time after

appointment and such injury or disease or aggravation permanently disables him for the performance of duty, he shall upon retirement for such disability, receive an annuity computed at the rate of 2 per centum of his basic salary at the time of retirement for each year or portion thereof of his service: Provided, That such annuity shall not exceed 70 percentum of his basic salary at the time of retirement, nor shall it be less than 66 2/3 per centum of his basic salary at the time of retirement.

"(2) In any case in which the proximate cause of an injury incurred or disease contracted by a member is doubtful, or is shown to be other than the performance of duty, and such injury or disease is shown to have been aggravated by the performance of duty to such an extent that the member is permanently disabled for the performance of duty, such disability shall be construed to have been incurred in the performance of duty. The member shall, upon retirement for such disability, receive an annuity computed at the rate of 2 per centum of his basic salary at the time of his retirement for each year or portion thereof of his service: Provided, That such annuity shall not exceed 70 per centum of his basic salary at the time of retirement, nor shall it be less than 66 2/3 per centum of his basic salary at the time of retirement. (Sept. 1, 1916, ch. 433, § 12 (g), as added Aug. 21 1957, 71 Stat. 394, Pub. L. 85-157, § 3; Oct. 23, 1962, 76 Stat. 1133, Pub. L. 87-857, § 1.)"

STATEMENT OF POINTS

The action of the court below requiring appellants to amend their order retiring appellee for disability not incurred in the performance of duty so as to retire him for disability aggravated by the performance of duty was arbitrary and capricious. It constituted, in effect, an erroneous vacation of a proper administrative order.

SUMMARY OF ARGUMENT

A police officer who consistently fails to perform his duty, who is reprimanded and disciplined by superiors for his repeated derelictions, and who thereafter broods over the disciplinary action taken to the extent that mental disability results, cannot properly claim that such mental disability was incurred "in the performance of duty" as this expression is reasonably and properly understood.

ARGUMENT

Because there was a rational basis for the administrative determination that appellee's disability was not incurred in the performance of duty, the court below erred when it substituted its judgment for that of the administrative body.

To qualify for retirement pursuant to § 4-527, D. C. Code, 1966, Supp. V, appellee was required to demonstrate (1) that a permanent disability existed and (2) that there was a causal connection between such disability and the performance of police duty. While the existence of a mental disability is here undisputed, the administrative record clearly establishes that there is no causal connection whatever between such disability and the performance by appellee of any police duty.

In requiring appellants to amend their order sustaining the action of the Police and Firemen's Retirement and Relief Board, the court below concluded that the "proximate cause of \* \* \* [appellee's mental] disease \* \* \* [was] doubtful" and that "the testimony of the psychiatrist" established that appellee's condition was "aggravated by police service" (J. A. 102). Citing Blohm v. Tobriner, \_\_\_\_ U. S. App. D. C. \_\_\_\_, 350 F. 2d 785, the court also concluded that appellants had the burden of proof. It is

clear, however, that, unlike in Blohm, appellants did not attempt to retire appellee "against his will." Far from disclosing that appellee resisted treatment, the administrative record is replete with evidence of statements on his part to the effect that he could not perform duty and, in fact, wanted to retire (J. A. 22, 27, 28, 30, 67, 73). However, because the administrative record clearly establishes that appellee's disability was not incurred in, or aggravated by, the performance of duty, any question as to the burden of proof is purely academic. The reason for this is that the very psychiatric testimony upon which the court below based its conclusion demonstrates beyond peradventure that appellee's disability was not incurred in or aggravated by the performance of police duty.

In this connection, what stands undisputed in the administrative record is that on numerous occasions appellee, as a result of his tardiness, failed to perform police duty and that, in addition, his infractions of the rules of the department involved the excessive use of alcoholic beverages. Appellee told the psychiatrist about

some<sup>1</sup> of these infractions, the bulk of which occurred subsequent to his transfer to the Fourteenth Precinct, and also told the psychiatrist about the reprimands by superiors and other disciplinary actions which resulted. In the opinion of the psychiatrist, this chain of events, and the chain alone gave rise to brooding on appellee's part and ultimately to the mental disability which appellee claims is compensable to the higher pension rate. Thus, when specifically asked by counsel for appellee if police duty was the cause of such disability, Dr. Shapiro referred to appellee's derelictions as well as to the disciplinary actions which followed. He then pointed out in language leaving no room for doubt that appellee's resultant tendencies to "brood" over such disciplinary actions was the cause of his disability. (J. A. 33, 34.) At a later point in the administrative proceedings, counsel again asked

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<sup>1</sup> The psychiatrist admittedly had not read appellee's personnel file and, consequently, was unaware of his multiple infractions throughout the years (J. A. 31). He thus had the mistaken impression that appellee's problems with his superiors were, for the most part, recent in origin (J. A. 55, 56). Moreover, it is also significant that appellee visited the psychiatrist on October 6, 1961, and had "no complaints" (J. A. 22, 23). He did not return until "about 11 months later" when he complained of a recent reprimand, stating that he felt that it was "only a question of time before" he would "be fired" and, in effect, again expressing his wish to retire (J. A. 23, 25, 26).

Dr. Shapiro whether appellee's "disability" was a result of police work, and the physician replied that he "was very much impressed" when appellee showed him "all of these papers" which disclosed disciplinary actions taken by supervisors as a result of his infractions. The physician then repeated that appellee thereafter "brooded" and that such brooding resulted in the disability (J. A. 86).

In this connection, Congress has made it abundantly clear that, to be compensable at the higher rate, a disability must have been incurred "in the performance of duty." [Emphasis added.] Stated differently, there must be a direct relationship between the disability and police duty actually performed by the retiring officer.

See Police Commissioner of Baltimore City v. King, 219 Md. 127, 148 A. 2d 562; Lawrence v. City of Los Angeles, 53 Cal. App. 2d 6, 127 P. 2d 931; Board of Firemen's Relief and Retirement, etc. v. Marks, 150 Tex. 433, 242 S. W. 2d 181. Moreover, apart from the letter of the statute in question, its obvious spirit and purpose is to protect against the hazards arising from the actual performance of police duties.

Applying these principles to the facts of the instant case, it cannot be said that appellee's disability is traceable to an act or a series of acts which can be defined as the "performance of duty"

as this expression is normally understood. Nor can it be said from this record that, while performing police duty, appellee encountered a hazard against which Congress reasonably intended to protect him. In short, it cannot be said that, because a policeman utterly fails to perform his duty and thereby sets into motion a chain of events resulting in disciplinary action, he may profit from his derelictions by attributing his disabling "psycho-neurotic condition" to the "brooding" which followed and thereby obtain retirement at the higher pension rate. It is, of course, a cardinal principle of statutory construction that statutes should be construed to avoid patently unjust or absurd consequences. See Church of the Holy Trinity v. United States, 143 U. S. 457, 12 S. Ct. 511, 36 L. Ed. 226; Bailey v. Young, 80 U. S. App. D. C. 65, 149 F. 2d 15.

In every previous case in which this Court concluded that retirement at the higher pension rate was compelled, the record disclosed either an event or series of events which occurred while the officer in question was actually engaged "in the performance of duty." In Crawford v. McLaughlin, 109 U. S. App. D. C. 264, 286 F. 2d 821, the disability was attributed to the police officer's fall on an icy pavement while making an arrest. In Hyde v.

Tobriner, 117 U. S. App. D. C. 311, 329 F. 2d 879, the disability resulted from injuries sustained while the police officer was starting his motorcycle. And in Blohm v. Tobriner, \_\_\_\_\_ U. S. App. D. C. \_\_\_\_\_, 350 F. 2d 785, a police officer, while trying to apprehend a speeder, collided with another vehicle, was thrown from his motorcycle 95 feet through the air and thereafter suffered from severe headaches which ultimately resulted in his retirement for disability.

Of particular significance and, by comparison, graphically illustrative of the merit of appellants' position is Souder v. Tobriner, 114 U. S. App. D. C. 267, 314 F. 2d 272. In Souder, as in the instant case, the retiring officer incurred a mental disability. But there the evidence was that the officer "while on duty \* \* \* contracted polio" and that this disease in turn caused "a marked, mixed type of neurosis with anxiety and depressive features and multiple psychogenic complaints." This Court held, therefore, that such mental disability compelled the officer's retirement at the higher pension rate. Thus, unlike the instant case, the disability was the direct result of a polio hazard encountered in the actual performance of police duty. And in Bradley v. City of Los Angeles, 55 Cal. App. 2d 592, 131 P. 2d 391, cited by this Court in Crawford, supra,

a police officer, while actually engaged in the performance of duty, was bitten by a dog, and was thereafter given Pasteur treatments.

The combination of these two factors aggravated a pre-existing disease of the liver. Mental disability then resulted which, in turn, caused the officer to commit suicide. Because the officer's mental disability and death could be traced to the dog bite which occurred when the officer was actually performing police duty, the Court ruled in his widow's behalf.<sup>2</sup> In the instant case, however, there is an utter lack of a sequence of events commencing at a time when appellee was actually performing police duty. Here, unlike in Souder or in Bradley, supra, the initial links in the chain of causation were appellee's numerous infractions of the regulations of his department. These derelictions obviously cannot be placed under the heading of "performance of duty," and, had they not occurred, there would have been no reprimands or disciplinary actions and, consequently, no brooding or depressive reactions on the part of

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<sup>2</sup> Compare also this Court's recent order in Horrigan v. Tibriner, et al., U. S. App. No. 19,844, entered March 23, 1965. The facts of that case disclosed that the officer's alleged mental disability followed "a mysterious rendezvous" with a fellow officer occurring at night at the Rock Creek stables when the officers were off duty.

appellee. Under such circumstances, the basis for the psychiatric opinion, and the only probative evidence in the instant case would not have existed.

Clearly, therefore, liberal and humane though the purpose of the Police and Firemen's Retirement and Relief Act may be, its provisions relating to retirement for a service-connected disability fall far short of reaching the facts of the case at bar. Accordingly, the conclusion that there was a rational basis in law for the order retiring appellee for a disability not incurred "in the performance of duty" is inescapable.

#### CONCLUSION

Upon the foregoing it is respectfully submitted that the order of the Police and Firemen's Retirement and Relief Board retiring appellee for disability not incurred in the performance of duty has warrant in the administrative record and a rational basis in law. Accordingly, the action of the court below in substituting its judgment for that of the administrative body was palpably erroneous and should be reversed.

MILTON D. KORMAN,  
Acting Corporation Counsel, D. C.

HUBERT B. PAIR,  
Acting Principal Assistant  
Corporation Counsel, D. C.

RICHARD W. BARTON,  
Assistant Corporation  
Counsel, D. C.

DAVID P. SUTTON,  
Assistant Corporation  
Counsel, D. C.

Attorneys for Appellants,  
District Building,  
Washington, D. C. 20004



BRIEF FOR APPELLEE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20,141

WALTER N. TOBRINER,  
JOHN B. DUNCAN,  
FREDERICK J. CLARKE,  
Board of Commissioners, D. C.,  
*Appellants,*

v.

ADRIAN S. CARROLL,  
*Appellee.*

APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

United States Court of Appeals  
for the District of Columbia Circuit

FILED AUG 22 1966

*Nathan J. Paulson*  
CLERK

CARLETON U. EDWARDS, II  
BERNARD MARGOLIUS  
1000 Vermont Avenue, N.W.,  
Washington, D.C.

*Attorneys for Appellee*

(i)

#### STATEMENT OF QUESTION PRESENTED

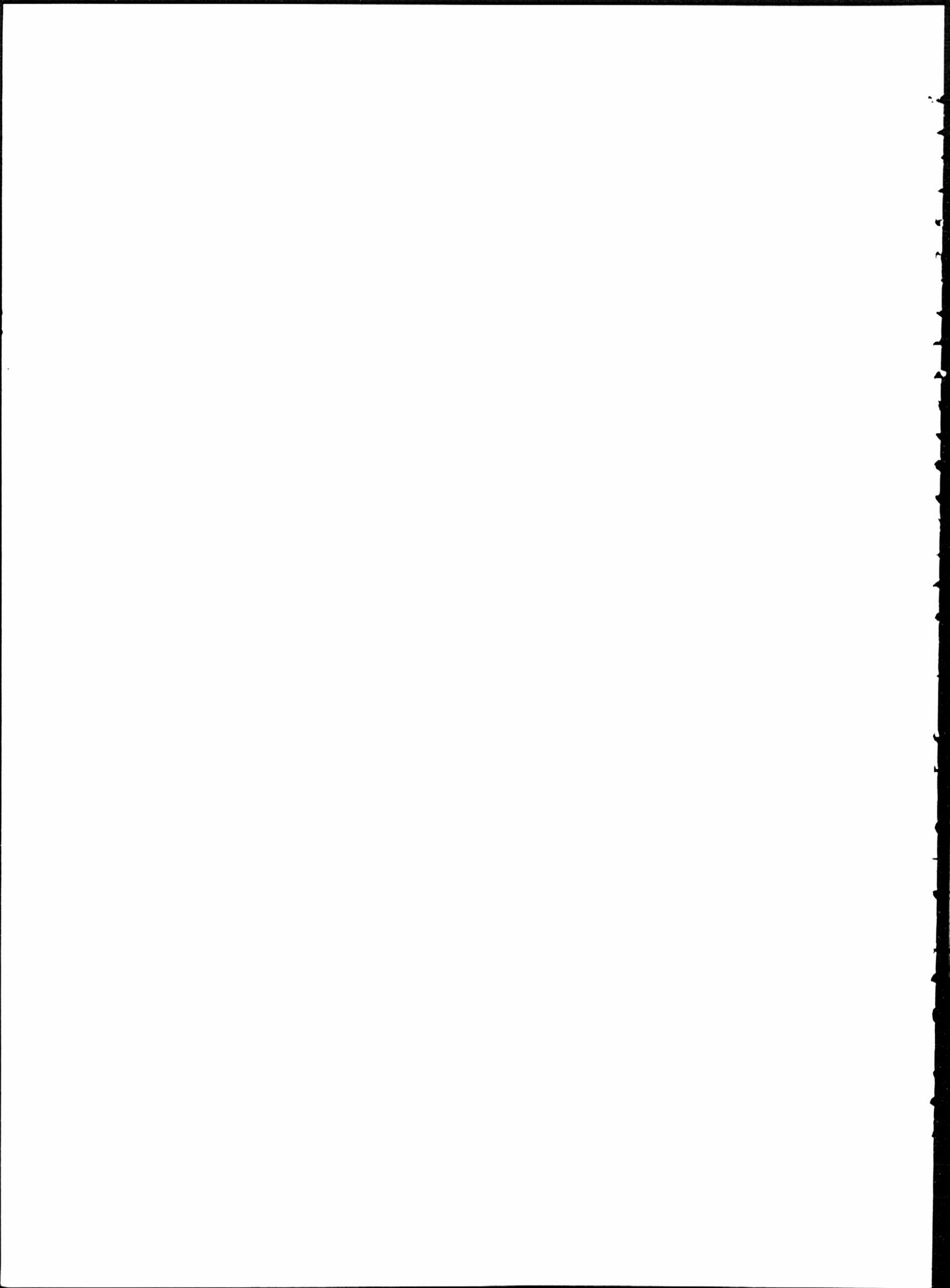
Whether the District Court was correct in reversing the decision of the Defendant Commissioners and ordering the plaintiff police officer retired for disability aggravated in the line of duty under D.C. Code Title 4-527(2) and the case of Blohm v. Tobriner, where defendants had approved excess sick leave for plaintiff for the same condition diagnosed as being attributable to duty by a physician member of the Board of Police and Fire Surgeons, who was under the said defendants' supervision and control, when such payment would have been illegal unless said condition was aggravated (or incurred) in line of duty, and where there was no medical testimony that said condition was not attributable to duty.

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# United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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*Appellee.*

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APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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## BRIEF FOR APPELLEE

## COUNTER STATEMENT OF THE CASE

1. (Plaintiff's Military Service) — Plaintiff,<sup>1</sup> born March 30, 1919, served in the U.S. Infantry overseas during World War II and was involved in considerable combat, had a shrapnel wound in his shoulder while in combat, received the Purple Heart Decoration, made a full recovery, filed no claim with the V.A., and was honorably discharged. (JA 17).

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<sup>1</sup> The parties referred to herein as they were in the court below.

2. (Plaintiff's Psychoneurotic Illness Incurred or Aggravated in Line of Duty) — Plaintiff, Carroll, was appointed to the Metropolitan Police Department on January 16, 1946, after having been examined and found fully qualified. Subsequently he sustained various injuries and suffered illnesses for which he was treated at the Police and Firemen's Clinic and received sick leave (Folder 58-59). During the period from January 30, 1946 through December 23, 1956, a period of approximately eleven years, he was late for duty 13 times, usually by two or three minutes (Folder 1-21) and gave as explanations various troubles with his clock, his car, his daughter failing to call him, etc. (Folder 11). On one occasion, April 20, 1956, he was under the influence of alcohol off duty (Folder 8-10).

He received a "satisfactory" rating from his Commanding Officer for all six (6) month periods between July 16, 1956 and January 16, 1961, except for the six month period ending July 16, 1956 during which the off-duty condition mentioned above occurred. (Folder 60).

At Precinct #12 he accumulated more than 100 hours of overtime work. (JA 61, 77).

On January 21, 1956, after having worked almost continuously for 30 hours and with practically no sleep and little food, and between details, he had two drinks; also, while on duty at the Armory for one of the Inaugural Balls, he was believed to be under the influence (Folder 53). As a result of this incident, after fifteen years at Precinct # 12, he was, on January 29, 1961, transferred to Precinct # 14 (Folder 55) where, as ordered by Police officials, "his assignment for the next 3 months will be such as to constantly remind him of his derelictions of duty" (Folder 52) (JA 103, footnote 3).

At Precinct # 14, he was assigned to much midnight duty alone on foot, on what he believed to be the longest beat in the Precinct (JA 30, 71, 78). He became upset and worried about properly covering his

beat and fearful that something would happen on one end of the beat while he was on the other end, etc. His worries became worse and he was directed to see Dr. H. D. Shapiro, a Board of Police and Fire Surgeons psychiatrist, which he did commencing August 31, 1961. Dr. Shapiro diagnosed his condition as "psycho neurotic depressive reaction" (JA 21) and noted that he had been taking sleeping capsules prescribed by Police Surgeon Dr. O'Keefe (JA 21).

At this time plaintiff was granted 22 days sick leave, 14 of which were in excess of that permitted by regulations except where the condition causing the sick leave arose as a result of duty, which excess sick leave was recommended by the Police and Fire Surgeons and approved by the Defendant Board of Commissioners (Folder 61).

Plaintiff was discharged from the clinic about October 6, 1961 and apparently was doing full duty, at which time Dr. Shapiro noted that the deprol which had been prescribed occasionally caused drowsiness (JA 23).

On September 12, 1962, the plaintiff returned to Dr. Shapiro having been ordered back by acting Captain Jenkins (JA 23). He reported having further trouble. He had been tardy a short time prior to this visit despite his attempted use of three alarm clocks (JA 24). He also reported that shortly before that time he had been late after having gone to the Precinct early so he would be sure to be on time, and had then fallen asleep in his car in back of the station (JA 24). At this time the plaintiff was very worried and depressed. He saw Dr. Shapiro subsequently (JA 23-30) during which consultation he broke down and wept (JA 25). He was fearful and stated that his superiors were watching him like a hawk (JA 25); he was also fearful that someone wanted to get his job (JA 26). On later visits to Dr. Shapiro he complained about insomnia and depression (JA 25) and was concerned and worried about the fact that the officials were out to get him, etc. (JA 29). After a

number of visits, Dr. Shapiro decided to write him up for retirement (JA 30).

On September 27, 1962, Dr. B. F. Dean, Jr., Chairman of the Board of Police and Fire Surgeons reported to the Chief of Police that, on the advice of Dr. Shapiro, plaintiff Carroll had surrendered his service revolver. (Folder 63).

On October 25, 1962, Dr. Shapiro, in his report to Police and Fire Surgeons, stated (JA 16):

"Private Adrian S. Carroll has been under my care and observation since August 31, 1961.

"Details of this and the past history and present illness reference should be made to exhibit the attached. My diagnosis is that of psychoneurotic depressive reaction, chronic, with some paranoid trends.

"It is my opinion, that because of the condition, Private Carroll is no longer able to perform the duties of a police officer. I therefore recommend that Private Carroll appear before the Retirement Relief Board in consideration of his retirement."

**3. (Police Surgeon's Medical Survey)** — A medical survey report of plaintiff by the Board of Police and Fire Surgeons, dated October 30, 1962 (Folder 64), diagnosed his condition as "psycho-neurotic depressive reaction" and recommended him for "retirement - disability".

**4. (Involuntary Appearance Before Retirement Board and "Split" 3-2 Decision)** — Plaintiff was involuntarily ordered to appear before the Police and Firemen's Retirement and Relief Board for consideration of his retirement (Folder 65) and as a result of a hearing held November 29, 1962, said Board ordered him retired for disability not incurred in the performance of duty, by a split 3-2 decision, with Dr. Thomas A. Matthews, the psychiatric member and the Deputy Chief

of Police, Lorain T. Johnson, the police member, dissenting and stating in part (Folder 66):

"This retirement should be for disability incurred in the line of duty."

At the hearing before the Retirement Board, Dr. Shapiro testified in substance that Private Carroll was no longer able to perform the duties of a policeman and was suffering from a psychoneurotic depressive reaction, chronic, with some paranoid trends. (JA 16)

He further testified in substance that Private Carroll had been transferred from Precinct No. 12 to Precinct No. 14. He stated that, at the time of his testimony, Carroll complained that he "gets sort of confused"; that he does not patrol the beat the way he used to before having a fear that something will happen at one end of the beat when he was at the other end; he no longer takes any interest in his work, although he has been a good policeman; his spirits are very bad and he's been down in the dumps. Dr. Shapiro's various reports were read in evidence and he testified before the Retirement Board as shown at JA 15-35, 55, 63-66, 84-86. Some of his pertinent comments made at the hearing are:

Q. ". . . First let me ask you, is police duty the cause of his condition?"

A. ". . . so, indirectly I would state that police duty did cause this." (JA 32-33)

\* \* \*

A. ". . . I do not think this man consciously tried to evade duties. He had a good report before he went into the military and for many years as a police officer. I think that is the important thing." (JA 33)

Q. ". . . Is it not true he himself starts a great deal of trouble from this Armory trouble where he had been working for three days straight?"

A. "That is right." (JA 33)

Q. "And from that time on he sort of was on the downslide. Is that right?"

A. "That's right." (JA 34)

Q. "Doctor, I don't like to get into the racial question but what significance do you put in this feeling that he had about another race? . . ."

A. "Well, it was another added factor in doing this type of duty that affected this man. . . . a certain number of people do react unfavorably to changing neighborhoods and changing types of positions." (JA 34-35)

Q. "Did he indicate to you, Doctor, that his attitude changed after he switched from No. 12 to No. 14?"

A. "Yes. He stated that after the reprimand he was given a change of precincts which did upset him, too. I did testify to that." (JA 35)

Dr. Shapiro testified further that plaintiff's difficulties did not arise until 1961 (JA 63); that "as I stated before, if he had not been doing police duty it would not have brought about the things that happened" (JA 66); that plaintiff showed no signs of malingering or exaggerating (JA 85); that he was not a basically emotional or unstable individual, but was probably a compulsive perfectionist type (JA 86).

Pertinent portions of plaintiff Carroll's testimony which appear in JA 35-84 are as follows: they followed him around and checked on him (JA 40); that he had commendations (JA 41); that during the last couple of years, "my nerves had been just about shot. I go on the beat and I just go one way and think that something is going to happen on the other end of the beat, and I carried a badge for almost 17 years in January, and I forgot where I put it" (JA 41);

That he got a 10 year good service pin for his first 10 years on the force (JA 51); he explained the off-duty under the influence situation which occurred in Bladensburg, Maryland (JA 51-54); he explained the Inaugural Ball situation, stating that he had had less than two hours

sleep during three days and three nights and that he was not suspended (JA 54-56); that he did not drink whiskey, only beer (JA 57); that he had accumulated more than 100 hours overtime and volunteered to work any time they needed him; and that they used to call him "Speedy", quoting Capt. Lyman as having stated, "He is not always on time, but is the last man to leave the station" (JA 61); that at Precinct # 14 he felt like he was going into the jungle" (JA 69); that most of the "beats" at # 14 were solid colored and that he worked on the longest beat in the precinct, much of it alone on midnight duty, on foot 99% of the time, and that he had been very much worried and upset while working these beats (JA 72-73); that he had served in the infantry in Burma, China and India during the war during which time he had no trouble with his nerves and had received the purple heart (JA 73-74); that some of his difficulty with colored people had come from the fact that "they killed that police officer there, they killed that poor old Jewish man" (JA 77).

There was no evidence of any consequence before the Retirement Board that Officer Carroll's Disability was the result of anything other than the performance of his police work and of his attitude to the performance of his police duties. In addition, it was agreed that he was disabled for further police duty, the only question being whether this disability was a result of performance of duty or not (JA 14-89).

5. **(Commissioners Affirm)** — The Defendant Commissioners affirmed the Retirement Board's split 3-2 decision retiring plaintiff for disability not incurred in the line of duty.

6. **(Suit Filed, Officer Granted Summary Judgment and Appeal)** — An injunction suit was filed in the District Court (JA 4) and cross-motions for Summary Judgment heard on February 24, 1966, when plaintiff's motion was granted and defendant's motion denied. The Court (Judge Gasch) filed a "Memorandum" (JA 101-104) ruling, in part, that:

"It clearly appears that the condition from which plaintiff suffers has been aggravated by police service" (JA 102).

The Court followed *Blohm v. Tobriner*, \_\_\_ U.S. App. D.C. \_\_\_, 350 F.2d 785 (1965), and stated in part that:

"Where the police department initiates (retirement) proceedings to retire an officer against his will for disability which is related to his official service, the evidence of such lack of connection should clearly preponderate and be substantial and persuasive. It is clear from this record that the burden has not been borne by the defendants. On the contrary, the Court finds, as previously stated, that the record discloses that the disease from which the plaintiff suffers was aggravated by his police service."

Thereafter, the Commissioners appealed.

#### STATUTES AND REGULATIONS

1. The pertinent provisions of the District of Columbia Code, 1961 Edition, namely, Sections 4-526 and 4-527, are:

**§ 4-526. Retirement for disability not incurred in performance of duty.**

Whenever any member coming under sections 4-521 to 4-535 completes five years of police or fire service and is found by the Commissioners to have become disabled due to injury received or disease contracted other than in the performance of duty, which disability precludes further service with his department, such member shall be retired on an annuity computed at the rate of 2 per centum of his basic salary at the time of retirement for each year or portion thereof of his service:

*Provided*, That such annuity shall not exceed 70 per centum of his basic salary at time of retirement: *Provided further*, That the annuity of a member retiring

under this section shall be at least 40 per centum of his basic salary at time of retirement. (Sept. 1, 1916, ch. 433, § 12(f), as added August 21, 1957, 71 Stat. 394, Pub. L. 85-157, § 3.)

**§ 4-527. Retirement for disability while performing or not performing duty.**

(1) Whenever any member is injured or contracts a disease in the performance of duty or such injury or disease is aggravated by such duty at any time after appointment and such injury or disease or aggravation permanently disables him for the performance of duty, he shall upon retirement for such disability, receive an annuity computed at the rate of 2 per centum of his basic salary at the time of retirement for each year or portion thereof of his service: *Provided*, That such annuity shall not exceed 70 percentum of his basic salary at the time of retirement, nor shall it be less than 66 2/3 per centum of his basic salary at the time of retirement.

(2) In any case in which the proximate cause of an injury incurred or disease contracted by a member is doubtful, or is shown to be other than the performance of duty, and such injury or disease is shown to have been aggravated by the performance of duty to such an extent that the member is permanently disabled for the performance of duty, such disability shall be construed to have been incurred in the performance of duty. The member shall, upon retirement for such disability, receive an annuity computed at the rate of 2 per centum of his basic salary at the time of his retirement for each year or portion thereof of his service: *Provided*, That such annuity shall not exceed 70 percentum of his basic salary at the time of retirement, nor shall it be less than 66 2/3 per centum of his basic salary at the time of retirement. (Sept. 1, 1916, ch. 433, § 12(g), as added Aug. 21, 1957, 71 Stat. 394, Pub. L. 85-157, § 3; Oct. 23, 1962, 76 Stat. 1133, Pub. L. 87-857, § 1.)

2. Chapter XXXIV, Section 9, of the *Police Manual* containing

the rules and regulations for the government of the Police Department promulgated by the Commissioners under the authority of Section 1 of the Act of February 28, 1901, 31 Stat. 819, as amended by the Act of June 8, 1906, 34 Stat. 221 D.C. Code (1929) Title 20, Section 472, provides:

Sec. 9. The board of surgeons, acting as such board, or members thereof in their individual capacity as such members, shall determine and shall be the only judges as to what amount of sick leave, if any, shall be granted any member of the force: *Provided, however, That in no case will sick time be allowed any member of the force in excess of 30 days, in any one calendar year, except when the same is in direct consequence of injury received (or disease contracted) in the actual performance of duty, or in case of a contagious disease where quarantine becomes necessary, and then only after the surgeon or surgeons have stated the cause of such absence, certified to its legality, recommended its allowance, and the same has been approved by the commissioners.* (Emphasis supplied)

#### SUMMARY OF ARGUMENT

Plaintiff, who had had no difficulty with his nerves while serving in the combat infantry and had been wounded and received the Purple Heart in World War II, became afflicted with a psychoneurotic condition as a result of worry about his inability to perform his police duties after being transferred to a different precinct, where he was assigned an excessive amount of midnight duty on a long beat, alone. Plaintiff's disability to perform his duty was conceded, and his condition was diagnosed as being attributable to his duty. Defendants acknowledged said condition as being attributable to duty by paying plaintiff excess sick leave which would be illegal under applicable regulations, unless said condition was incurred in line of duty. Where there was no medical evidence that said condition was not incurred in

the line of duty, under the applicable law and case of Blohm v. Tobriner, the District Court's decision reversing the Commissioners' decision should be affirmed.

#### ARGUMENT

##### I

###### **Under the Blohm Case, Defendants Had the Burden of Establishing That Plaintiff's Disability Arose Other Than in Line of Duty, Which They Failed To Do.**

The Retirement Board erroneously took the position that an officer who is faced with retirement for disability which permanently prevents him from performing his duties has the burden of proving by "substantial evidence" that his disability arose out of his performance of duty.

Thus see letter dated November 7, 1962, from the Retirement Board to the Chief of Police (Folder 65), indicating that the Board feels that the burden of proof is on the officer, stating in pertinent part:

"Private Carroll may be expected to demonstrate a connection between his official police duties and the disability which incapacitates him for further duty."

As further evidence of this fact, a memorandum from Personnel Officer, D.C., to the Commissioners, dated August 12, 1963 (Folder 69), states, in part:

"... that no substantial evidence had been produced which would lead it (the Retirement Board) to conclude that Private Carroll's psychoneurosis was caused by or aggravated by the performance of police duty." (Emphasis added)

Plaintiff did not seek to be retired from the police force and he is not the moving party.

The District Judge found as a fact that plaintiff's appearance before the Retirement Board was involuntary as shown by the letter dated November 7, 1962, from Retirement Board to the Chief of Police

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in which plaintiff was directed to appear before the Retirement Board. (Folder 65, JA 103, Footnote 2) This involuntariness on his part is of importance, as shown by the case of *Blohm v. Tobriner*, which stated in part:

"Where it is the Police Department which initiates a proceeding to retire an officer against his will and for a disability which is alleged to be unrelated to his official service, the evidence of such lack of connection should clearly preponderate and be substantial and persuasive. Absent a record of which this can be said, the Department may be said to have failed to carry the burden fairly to be assigned to it under the statute." (Emphasis supplied)

Defendant's protestations that plaintiff's retirement was not against his will" are all based on statements made by plaintiff after he had become confused, fearful and unable to "think straight" and after his psycho-neurotic condition had been diagnosed by a physician under their supervision and control and at a time when plaintiff accepted the fact that he was unable to properly perform police duties.

There was absolutely no medical evidence that plaintiff's condition was not incurred in line of duty, and thus under the Blohm case there was no "rational basis" to sustain the defendant's decision as they now urge.

This Court has on many occasions reversed the Commissioners' findings in retirement cases, and there is no reason why the District Court cannot do likewise, as was done in this case, where the District Court is reviewing similar to an appeal.

## II

**Defendants' Action in Granting Plaintiff Excess Sick Leave Was Acknowledgment That Plaintiff's Psychoneurotic Condition Was Contracted (or Aggravated) in Line of Duty.**

The diagnosis of Dr. H. D. Shapiro, made August 31, 1961, was "psycho neurotic depressive reaction" (JA 21) and this was the same condition for which Officer Carroll received 22 days sick leave. (Folder 61) This also is the same condition mentioned in Dr. Shapiro's report dated October 25, 1962 (JA 16 middle Folder 62), and was shortly before Retirement Board hearing, the identical condition mentioned in the Board of Police and Fire Surgeons Medical Survey of October 30, 1962 (Folder 64).

All of Dr. Shapiro's medical reports were read into the record before the Retirement Board (JA 15-30). A careful examination of this testimony indicates that the plaintiff's condition arose out of his police duty or at the very least was aggravated by police duty which would bring it within the scope of the Statute, Title 4-527, infra (JA 102), as found by the District Court Judge, who stated, ". . . it clearly appears that the condition from which the plaintiff suffers has been aggravated by police service."

The defendants have clearly recognized that plaintiff's psychoneurosis was service connected by granting him excessive sick leave for this condition (Folder 61), which excess sick leave would have been illegal under the law and Section 9 of Chapter XXXIV of the Police Manual, under which plaintiff, along with other police officers, was only entitled to 30 days sick leave "except when the same is in direct consequence of injury received or disease contracted in the actual performance of duty \* \* \* and then only after the surgeon or surgeons have stated the cause of such absence, certified to its legality, recommended its allowance, and the same has been approved by the Commissioners." (Emphasis supplied)

All of the foregoing requirements were met, including approval by the Chief of Police, and plaintiff was paid for excess sick leave. The aforementioned report bears on its face, among other things, the following: "Approved by the Commissioners, District of Columbia, sitting as a Board." (Folder 61)

This and similar benefits were commented upon in the Blohm case (which reversed a District Court decision) where it was stated in part:

"... He was given, accordingly, several days of excess sick leave and his medical bills were paid from public funds — benefits which, in the one case, under statute and, in the other, under police regulations, were available only in the case of service connected disabilities."

Judge Gasch specifically commented on this point in his Memorandum, stating in part (JA 103):

"It is clear from this record that this burden has not borne by the defendants. On the contrary, the Court finds, as previously stated, that the record discloses that the disease from which the plaintiff suffers was aggravated by his police service.

"The Court's evaluation of the record is in line with the previous administrative decision to grant plaintiff sick leave in addition to the usual annual allowance which required a finding that the illness or injury, because of which the leave was granted, was related to the line of duty". (emphasis supplied)

### III

#### **Defendants Have Exaggerated the Nature and Extent of Plaintiff's Infractions**

Defendants in effect argue that since plaintiff had a bad service record, he should be denied his retirement in line of duty. This Court has ruled to the contrary in *Spencer v. Bullock*, 94 U.S. App. D.C. 388 (1954), 216 F.2d 54, in which the Commissioners were prohibited

from denying a police officer his right to voluntary retirement because of his suspension for failure to explain the source of some of his income.

Because of repetition, etc., defendants' brief gives an exaggerated picture of plaintiff's record. When analyzed, it shows that over a period spanning almost 17 years, he was tardy for work 26 times, 13 times in the last two years after he had become ill (and usually only a few minutes, during a portion of which times he was taking a prescribed medicine which made him drowsy), that he failed to check off duty once, was under the influence once off duty, and under the influence once on duty (in each instance he had a mitigating explanation). These last two instances could hardly be deemed "excessive use of alcoholic beverages" as characterized in defendants' brief at page 13, and, while being late for work is not commendable, there are much worse things. Also, not by way of excuse, but as an indication of his devotion to duty, plaintiff accumulated more than 100 hours of overtime.

#### CONCLUSION

An examination of the pertinent statutes, regulations and exhibits clearly shows that plaintiff's disability to perform his police duties (which was conceded to exist) resulted from aggravation caused by police duties), as was found by the District Court Judge, whose decision was based in part on "the humane purpose of the retirement laws" as reflected in the case of *Crawford v. McLaughlin*, 109 U.S. App. D.C. 264, 286 F.2d 821 (1960), and that therefore the decision that plaintiff should be retired for disability aggravated in the line of duty should be affirmed.

Respectfully submitted,

CARLETON U. EDWARDS, II

BERNARD MARGOLIUS

1000 Vermont Avenue, N.W.

Washington, D.C. 20005

*Attorneys for Appellee*